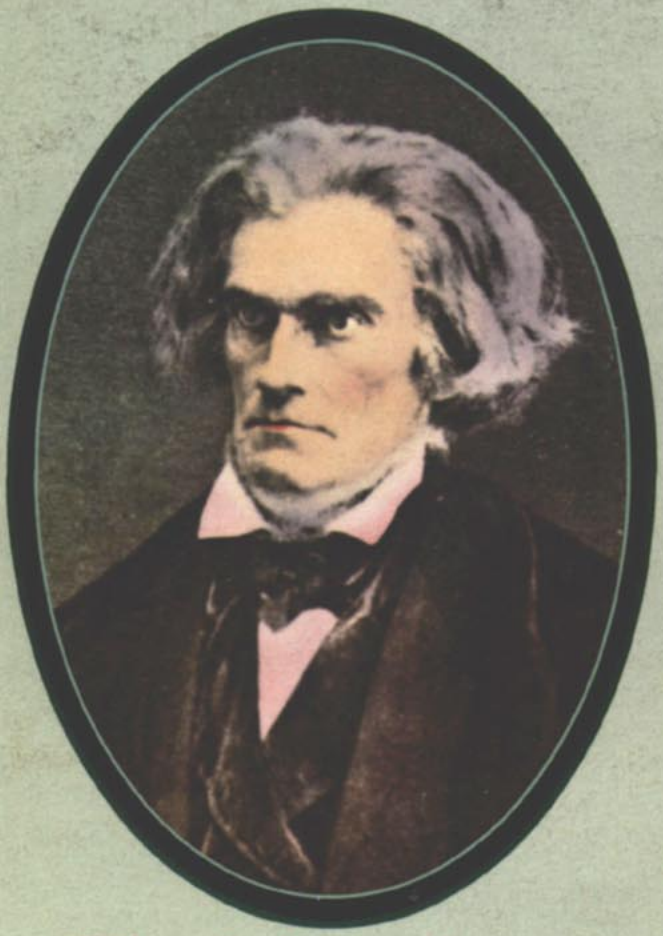
The case against law school
The false promise of direct mail

The Washington Monthly

JUNE 1983/$2

From Calhoun to Sister Boom-Boom:



The dubious legacy of interest group politics

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THE $10,000 1983 EUGENE C. PULLIAM FELLOWSHIP EDITORIAL WRITING AWARD

The Sigma Delta Chi Foundation is pleased to announce the 1983 Pulliam Fellowship, which honors an editorial writer by helping to broaden journalistic horizons and knowledge of the world.

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The award is made possible through a grant from Mrs. Eugene C. Pulliam.

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LETTERS

Taking Aim

Leslie Gould's article ["Liberals: The NRA's Best Friends," April] raises the important point that many people mistakenly believe hunting is somehow tied to the issue of handgun control. Unfortunately, he adds to this misconception by making unsubstantiated claims that the majority of handgun control activists look down on hunters with contempt. As the recently elected chairman of the National Coalition to Ban Handguns, and a hunter for the past 27 years, I am insulted by this. In making such a broad allegation bereft of any facts, figures, or quotes, he reinforces the very problem he's addressing. I wish he had called us before writing the article; we could've set him straight.

As a scare tactic, the National Rifle Association has consistently tried to link handgun control to hunting. In a recent membership letter the NRA states, "We all know their Master Plan: First, outlaw all handguns. Then register all rifles and shotguns. Finally, confiscate and destroy all rifles and shotguns. . . .Make no mistake, these anti-gun and anti-hunting forces are working feverishly for the day when they can gather up your rifles, handguns, and shotguns and ship them off to gun-melting furnaces." This overheated rhetoric is designed to mislead hunters into thinking the NCBH is fronting a gun-grabbing conspiracy operating under a shadowy Master Plan. Welcome to Fantasyland.

Handgun control has nothing to do with hunting. It is a movement to restrict and eventually ban a type of weapon that, unlike rifles, is used primarily to kill people. The National Coalition to Ban Handguns is working to ban handguns to save lives and isn't concerned with the ethics of hunting. In fact, some of our best friends are hunters. . . .

REVEREND JAMES ATWOOD
Washington, D.C.

Leslie Gould Jr. would have us believe that the antipathy of liberals for hunters is behind their inability to persuade our state and federal legislative bodies to enact adequate handgun laws. Since he may have interviewed more hunters than I have, I shall not deny that his arguments may have some validity. However, I do believe that he has not told the whole story.

Ten to 15 percent of the murders committed each year in the United States with guns are actually committed with shotguns and rifles. If we ever succeed in banning handguns in America, the number of crimes committed with shotguns and rifles is apt to increase. There might then be a new demand from liberals to ban all private ownership of guns.

Could this thought have occurred to some of Mr. Gould's rural friends who vote against handgun control? Or is it only me, a hostile urban liberal, who can imagine that hunters are willing to tolerate city mayhem to protect their country fun?

FRANK N. EGERTON
Racine, Wisconsin

Fedbeats

I am a recent college graduate who, in good faith—and I now find reason to pat myself on the back—began to repay my government loans as soon as the bills arrived. I was amazed at the figures on defaulting and incredulous at the federal government's apparent unconcerned attitude toward collection ("Debt, Where Is Thy Sting?" Richard Meyer, April).

The idea presented, to use the Internal Revenue Service computers to catch these defaulting ingrates via an "offset" process, is brilliant. I wish that Congress would agree and grant IRS the power. Why should the weight fall on the already laden shoulders of the judicial system when a legislative or executive solution is at hand? The Reagan administration has already found it easy enough to instruct the IRS to call tax-exempt such questionable "educational" institutions as Bob Jones University; isn't another simple instruction all it takes? Sure, we want the government off our backs, but not when it comes to collecting what it is justly due.

Money repaid on college loans—the NDSL in particular—is returned to a fund that enables other qualified students to pursue their educations. I was able to pursue mine only because of the integrity of past debtors.

Seeing as how the Reagan administration has already cut off its nose by cutting back support of higher education, I should think it would be a bit more concerned with recovering what the government has already lent out.

ELLEN J. MEANY
Highland Mills, New York

California uses a similar system for parking tickets: unpaid fines are included in the next vehicle registration fee.

THOMAS MAHON
Walnut Creek, California

Judicial Review

In your April issue ("Tilting at Windmills"), you chide a reporter for failing to get the facts that would enable him to evaluate the accusations in a story he wrote. It's a pity you didn't follow that good advice before quoting with approval (I might even say, with

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relish) another reporter's purported refutation of Chief Justice Burger's claim that the Supreme Court is overburdened.

As it happens, I agree with the conclusion that the court's workload has not yet reached crisis proportions. But the evidence cited by the reporter proves nothing of the sort.

The reporter noted that the court is not in session from early July to early October, and that the justices spend much of that time away from Washington. True enough. But what he didn't say is that during this period the justices are receiving and studying a steady stream of applications for review that will be considered at the court's first conference in the fall. For example, at the opening session of its current term, on October 4, 1982, the court took summary action in more than 60 cases, agreed to hear 16, and denied review in nearly 800 others. Do you really think the justices started work on those cases only when they returned to Washington in September?

What is even more surprising, you point to the small number of hours the justices spend on the bench hearing oral argument, as if that were the most important part of their job. Maybe you think law clerks are writing the opinions, but until the evidence proves otherwise I will continue to believe that this is where the justices put most of their time and energy.

It's true that 16 opinions a year per justice is not much compared to the number written by the judges of the courts of appeals, but when you consider that only the toughest issues ordinarily get to the Supreme Court, 16 opinions can add up to a formidable workload.

What does cast doubt on the justices' claims of overwork is their propensity for writing so many separate opinions and their willingness to grant review in cases that don't really present issues of national importance. But to suggest that they spend their time taking long vacations and intrasession breaks is to display an indifference to the facts that I hoped never to see in (what remains) my favorite magazine.

ARTHUR D. HELLMAN
Pittsburgh, Pennsylvania

"The guilty continue to escape on technicalities." So states Charles Peters in "Tilting at Windmills" in the April issue.

Frankly, I was somewhat taken aback by this rather naive assertion by one of the men whom I have always considered a worldly and knowledgeable writer. Mr. Peters goes on to cite several cases involving what he considers usurpations of the law; certain cases that, in his opinion, were adjudicated with a flagrant disregard of the judicial system.

This is the old, old song sung by the right-wing lunatic fringe. The refrain goes like this: "They were guilty as hell, but the marshmallow judges let them off on a *technicality*." Truly, there is no such thing as a technicality in law when it concerns the rights of the defendant, or, indeed, the rights of the people.

Technicalities often occur in questions of search and seizure. These questions go directly to the gut of the Fourth Amendment. These are not technicalities when an accused is freed. His freedom is born of his constitutional rights.

Along with Peters, I sometimes want to throw up when I read of obviously guilty people being freed because the cops failed to understand the need of adhering to the basic concepts of arrest, and the prosecutors built sloppy cases on tainted evidence; but I recognize the need for the rule of law.

PETE TORGE
Hollywood, California

Magazineaucrats

Anyone who has read more than two issues of *The Washington Monthly* knows that you are obsessed by an unremitting hatred of "bureaucrats." It was, however, astonishing to see you describe the staff of the United Steelworkers as bureaucrats. What in the world *is* your definition of bureaucrat? Anyone who works at a desk? Does that include the editors and staff of small magazines?

LORRAINE A. JEITNER
Sacramento, California

Novel Arguments

Like Nicholas Lemann ["Today's Best Journalism: Better Than Fiction," March], I have often speculated about why Washington novels are so bad. I agree with his three reasons, but would add two more:

1. Unlike Paris or London or most other capital cities, Washington is merely the political, not the cultural capital of the country. As a consequence, our best professional novelists don't live here, or know much about what goes on here. (Gore Vidal thinks he does; but his one contemporary Washington novel, with typical panache entitled "Washington, D.C.," is awful.) The writers who do live here and write most of the novels are journalists, or ex-journalists. Some newsmen are excellent, though perhaps unintentional fictionalizers, as we know; but in general, journalism is poor training for writing good novels. The latter only begins where the former leaves off.

2. Maybe because they are mostly journalist-written, Washington novels tend to be too overt—too unsubtle—in their treatment of the pursuit and exercise of power. They focus too much on backstairs skulduggery and corruption of one kind or another, as though that were all Washington is about. Not only does this approach usually fail to illuminate; since Watergate it has become positively redundant. What writer could possibly invent a story about malfeasance in high places more absorbing or revealing than the real thing was?

When Russell Baker lived in Washington, we occasionally discussed what it would take to write a good Washington novel. One day he said to me: "I think I've got it. The way to tell the story is through the women." It is certainly one way. I wish he had tried it. He is one journalist who might just have pulled it off.

ALBERT MEISEL
Chevy Chase, Maryland

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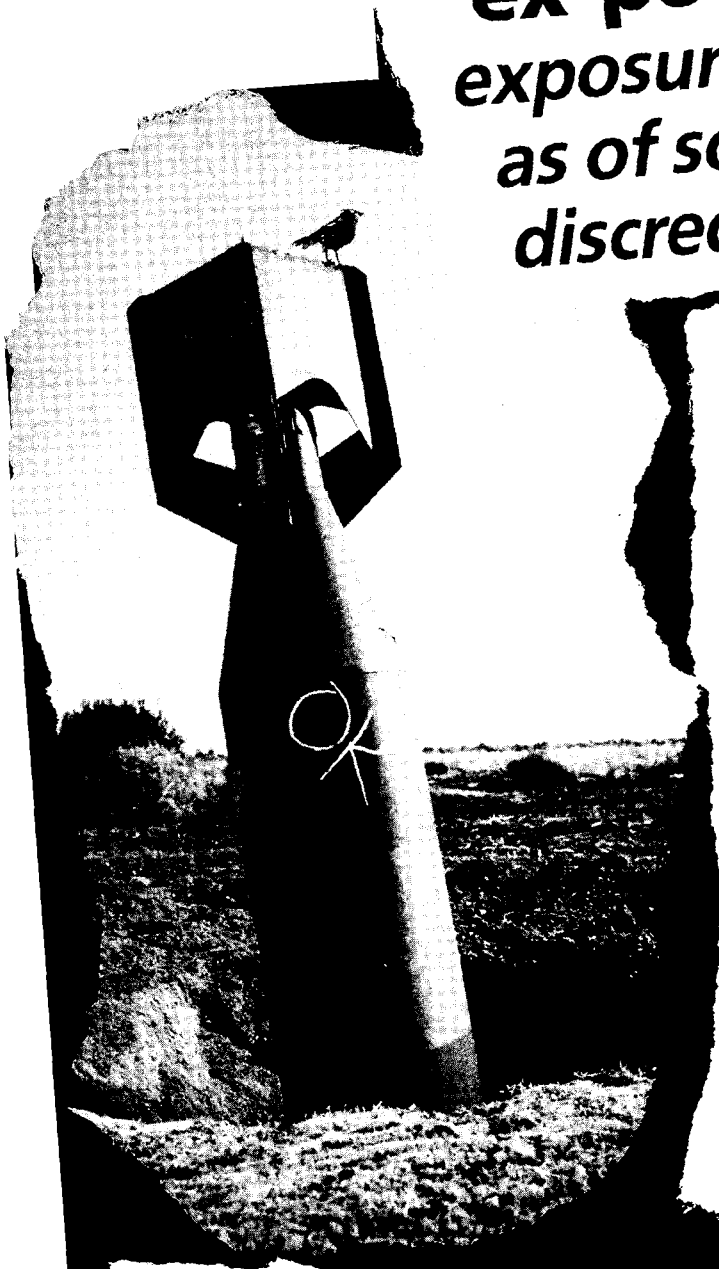
ex•po•sé, *n.* an exposure or revelation, as of something discreditable.



WHAT'S THE POINT of spending billions of dollars on new weapons when, all too often, those weapons do not work? Exposés of defense boondoggles are a dime a dozen. But *Reason* probed much deeper—and discovered systematic rigging of new-weapons tests. Our findings led Sen. David Pryor to propose major reform legislation—and "60 Minutes" to do a story on the subject.

Investigative journalism is one of the things *Reason* does best. We made news several years ago with an expose of misuse of federal grants by Cesar Chavez's union. That story was picked up by NBC television—and sparked a fresh investigation that ordered the funds returned.

Then there was our myth-shattering reexamination of the Love Canal incident—which showed that it was the *local government* that caused the chemical wastes to leak into the neighborhood. That story was featured on "ABC Nightline" and won a Mencken award as best investigative report of the year.

But *Reason* doesn't just expose wrongdoing. We also go out of our way to identify little-known but promising developments that can improve people's lives. Like our 1981 cover story on *competing* electric power companies. In 23 American cities, people actually have a choice of electric companies. As a result, they get better service *and* lower prices. That story won *Reason* first place in the John Hancock Awards for Excellence.

We've also been the first to cover "privatization"—exciting new techniques for introducing competition and private enterprise into public services.

Give *Reason* a try. If you're tired of knee-jerk liberalism and knee-jerk conservatism, *Reason* could be just the breath of fresh air you've been looking for.

☐ Please enter my one-year (12-issue) subscription to *Reason* at the special introductory rate of just $12 (50% off the single-copy price). If I'm ever dissatisfied, for any reason, you'll refund my money on all unmailed copies.

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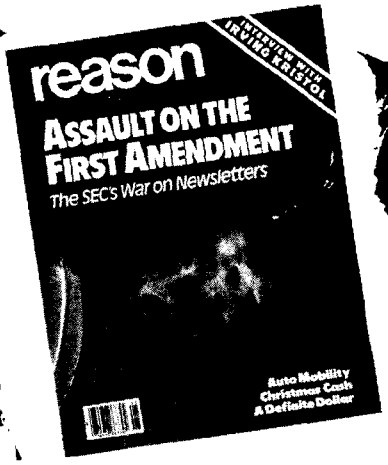

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Conscientious Drivers

I endorse Franklin Lavin's prescription for draft non-registration ["Registration Drive," April] on the grounds of traffic safety. I expect (and hope) that those who would not register for the draft would also drive (very carefully) without a license.

PETER N. REED
Phoenix, Arizona

A CONFERENCE ON NEOLIBERALISM

The Washington Monthly will sponsor a conference the weekend of October 22 to discuss the nature of neoliberalism and its future. The conference will be chaired by Charles Peters, editor of The Washington Monthly, and will include journalists, academics, political leaders, and others involved in or interested in the movement.

NEOLIBERAL CONFERENCE
2712 Ontario Road, N.W.
Washington, D.C. 20009

Please reserve _____ places for me at the Conference on Neoliberalism.

I will arrive on the ☐ 21st ☐ 22nd and will stay _____ nights.

Enclosed is a deposit of $25 per reservation. (Make check payable to The Washington Monthly.)

For further information, write Carol Trueblood at the above address.

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TILTING AT WINDMILLS

The federal government spends more on the retirement of its employees than it does on all its programs for the needy. In 1982 the Civil Service retirement program cost $31.4 billion, while the combined total for food stamps, housing assistance, and welfare was $26.9 billion.

Many people are now aware that the federal pension system is far more generous than the private sector's. But few realize that the same is true of many state pension systems. The *San Jose Mercury News* recently compared combined pension and Social Security income of people under California's Public Employees Retirement System with those of five large corporations. The result as a percentage of their final salaries: Aerojet, 56 percent; IBM, 74 percent; Pacific Telephone, 63 percent; General Motors, 57 percent; U.S. Steel, 62 percent; public employees, 97 percent. . . .

Speaking of government employees, last month I was invited to talk to a group of them on "The Myth of the Underpaid Federal Worker." I did not, as you can imagine, receive a standing ovation. But most members of the audience, while clearly disagreeing with me, were courteous and thoughtful in their comments. Still, there were too many who angrily rejected any suggestion that any federal employee might be compensated too generously. One said indignantly, "I'm not concerned about Middle America's being concerned about what I get paid." . . .

The *New York Times* Washington Talk page has been beating us to too many tidbits and outrages lately. One I especially envied was this:

"Even away from their beat the men and women of the White House press corps like to advertise their status in little ways that cannot be easily overlooked. That may explain why they are avid collectors of baggage tags, T-shirts, and other items that identify them as part of the journalistic tribe that travels with the president of the United States.

"It used to be that after each major presidential trip the White House transportation office would post a sign-up sheet for those interested in ordering commemorative T-shirts from an outside vendor. Now, however, the procurement of this merchandise has shifted.

"The Press Corps Store, a small mail-order enterprise, has opened for business in Vienna, Virginia.

"A small duffel bag emblazoned with a drawing of the White House and the words 'White House Press Corps' is the single most expensive item, at $25. T-shirts of the president's foreign trips are listed at $8 each. 'A great gift for the political friend or political foe,' says the brochure. 'Give your friends some recognition.'

"Recognition, of course, is a precious commodity and there is always the danger that the wide distribution of this prestige merchandise could, in the argot of White House reporters, cheapen the beat. What is to keep a lobbyist from walking into a bar wearing a T-shirt from the president's trip to the NATO summit?". . .

There is a fine art to drafting legislation in such a

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way that its impact is precisely on target and that there are no unintended or unanticipated consequences. This year's champion is a bill introduced in the Maryland state senate to add a subsection to Section 10-414 of the Natural Resources Article of the Maryland Code: "In Queen Anne's County, a 100 percent disabled American veteran may hunt raccoon on state-owned property on Wye Island during the open season for hunting raccoon if the veteran is accompanied by at least 1 aide and 1 attendant.". . .

You may recall the article in which Bill Keller predicted the next step for the lobbyists would be to "professionalize" themselves as lawyers, doctors, and practically all other groups have done ("Coming Soon: The Licensed Lobbyist," November 1982). Well, it's happening even sooner than we expected. According to *The New York Times*, Catholic University is actually establishing a graduate program in lobbying that will award a master of arts degree in congressional and government relations. . . .

Now to bring you up to date on some other *Washington Monthly* articles. First, "Artistic Licenses," by Philip Weiss, October 1982, which discussed the trend toward certifying artists as a way to determine eligibility for special rent subsidies. If you doubted that New Yorkers could really be serious about this idea, a man named Mark Burman can set you straight. He is now serving, according to the tabloid *Manhattan*, a sentence of a year and a day for falsely saying he was a theatrical director so that he could get a subsidized apartment in the Manhattan Plaza housing development. The FBI may have trouble nailing the members of the Mafia, but it was relentless in discovering that the Central Arts Center for Religion and Arts, where Burman said he was director of theater workshops, does not exist. The result, as *Manhattan* put it: "Once again, Mark Burman is residing in federally subsidized living quarters. Now, however, he gets his meals, too.". . .

On another front, you will recall that last year our proposal to catch the crooks by calling in the big bills was endorsed by the Internal Revenue Service. Now Representative Richard Schulze is sponsoring a bill that would give the Treasury the authority to call in existing bills on short notice and obtain the name, address, and Social Security number of any person who exchanges more than $5,000 worth. Since crooks tend to use $100 bills, this could leave them with the choice of bankruptcy or exposure. . . .

Generally, we oppose jailing nonviolent criminals, since we favor putting the violent away for a long time and need the available prison space for that purpose. But jail is necessary in the case of the nonviolent who just won't stop committing crimes. One example is a Washington area landlord named Shao Ti Hsu. Over the years he has been cited repeatedly for housing and fire code violations against his lowest income tenants. He just pays his fines and goes right on violating the codes. If putting Mark Burman in jail strikes me as insane, it seems exactly the right place for Shao Ti Hsu, and I'm delighted to report that a local judge has just handed him a 20-month sentence. . . .

Here's the latest on the travel habits of government officials. The Sunnyvale, California, city council spent $25,747 on travel by its seven members last year. How did the council manage to spend so much? On conferences, of course. It cost the city $4,772 to send just three council members and the mayor to the meeting of the U.S. Conference of Mayors in Minneapolis. To provide a reason for the trip, the city also paid $2,025 in dues to the Conference. This year the dues have doubled, and, you can be practically certain, so will the travel costs.

The military, of course, continues to lead all branches of government in travel extravagance. Not long ago an army general who was on leave in Georgia ordered a plane from Fort Belvoir, Virginia, to take him to Washington for a speech and return him to Georgia. The cost was $4,800. He could have taken a first class commercial flight for around $300.

But my favorite is the travel budget of the House of Representatives District of Columbia Committee. It proposes to spend $11,650 for travel in 1983. Since the office of the committee, its meeting place, and its only legitimate legislative concerns all are located in one place, the case for any travel budget appears to be a bit less than compelling. . . .

Another recent enthusiasm of mine is the

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advertising of Corbin, a clothing manufacturer. It describes itself as "a family-owned business devoted to quality." As we have pointed out, one of the greatest weaknesses of American capitalism is that such devotion to quality as against maximizing profits is only possible in family or non-publicly owned businesses. Corbin is also talking *Washington Monthly* language with the headline on one of its current ads. It reads, "If all one company can do to grow is buy another company." And this copy follows, "Not that buying other companies isn't a fun business, especially if you're playing with stockholders' money and you've got a golden parachute strapped to your back. It just isn't the real business of business, which is building assets. Not exchanging them.". . .

My long-standing proposal to replace half our tenured civil service with short-term appointees may sound crazy, but have you ever wondered why the government worked so well during World War II? Not only the draftees but also many officers and Washington officials came in from the outside just for the duration, providing different points of view and a marvelous irreverence toward the chain of command that ordinarily stifles creativity in the civilian and military bureaucracies. . . .

Two days after Hu Na, the Chinese tennis star, was granted asylum in the United States, Associated Press reported from Tokyo: "Japan has deported a Chinese interpreter because the United States rejected her plea for political asylum." The interpreter's case was more typical than Hu Na's. Last year two-thirds of the asylum decisions made by the government went against the applicant. . . .

One argument used by those who oppose television coverage of the Senate is that there is a gallery that is open to members of the public who want to observe their senators in action. Nicholas Penning, a Washington writer who works on Capitol Hill, points out the holes in this argument. First, not everyone can get to Washington. Second, if you do manage to get there, just as things begin to get interesting, the doorman will tap you on the shoulder and tell you your 15 minutes are up. If you want to see more, your only choice is to go to the end of the line and wait until several hundred people ahead of you have had their turn in the gallery, by which time the debate or vote you wanted to see is probably finished anyway. . . .

During the fight over interest withholding, Bob Dole was trying to scare the banks with the possibility of a fate worse than withholding and in the process came up with an idea that I love. It is to enact a special excise tax on banks to pay America's share of the cost of the International Monetary Fund. The nation's 20 largest banks now pay an effective tax rate of only 2.3 percent. And the IMF is of course laboring night and day shoveling out money to Third World countries to keep them from defaulting on imprudent loans made by these very same banks. So why shouldn't they pay for the IMF instead of the rest of us? . . .

There is a law in Alabama that requires the parents of a premature stillbirth to buy a casket for its burial. Not long ago an elderly mortician evaded the law out of mercy for a woman who had no money. He was indicted by a grand jury, fined, and had his license temporarily suspended. . . .

When there is money left at the end of a shipbuilding contract, ship commanders often have the standard furnishings in their quarters ripped out and replaced, without competitive bidding, with high-priced, custom-made furniture. Some examples turned up by an investigation conducted by the Better Government Association:

The wardroom of the *USS Callaghan* was furnished with a $14,000 custom-made leather sofa, a $13,500 custom-made combination bookcase, television storage cabinet, and planter (including plants and grow light), an elegant sculptured lamp, and silk flowers costing $250.

The *USS Fletcher* got several thousand dollars of color-coordinated reupholstering, a custom-quilted, pearl-colored bedspread, oriental draperies, and "paprika velour" carpet that cost $2,186.

The captain's wardroom of the *USS Kidd* was outfitted with a custom-made leather sectional sofa and a custom-made Chippendale-type sofa and wingback chair for $18,000. Also wool carpeting costing $41,071 ($15,600 of which went to Litton for profit and administrative costs for a total of $94 a yard) was installed. According to the BGA, shipyard employees who toured the *Kidd* couldn't decide whether it looked more like "a funeral home or a house of ill-repute.". . .

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It seems to me that our experience with the Bay of Pigs in April 1961 and with the Cuban missile crisis a year and a half later tells us a lot about what we should be doing or not doing in Nicaragua today. In the case of the Bay of Pigs, where we sponsored an invasion of Cuba, we did the wrong thing. A lot of the invaders lost their lives and the rest were taken prisoner. Nothing was accomplished. We had no right to sponsor an invasion of Cuba, and we have no right to sponsor an invasion of Nicaragua now. On the other hand, when the Russians began to install missiles in Cuba that were a direct threat to the U.S., we took immediate action and we were right to do so. The lesson for the present is this: Leave Nicaragua alone unless it does something that actually threatens us, like the Russian missiles in Cuba did. Then we must take immediate action. But even that doesn't have to be an invasion. The Cuban blockade demonstrated that there can be ways to handle such problems without killing people. . . .

By the way, the people who ridicule Jimmy Carter might think of the wisdom, courage, and humanity that informed his policies toward Central America. The Panama Canal Treaty is the best single step the nation ever took in its relations with that area. . . .

In all the bankers' indignation over interest withholding, they seem to have forgotten that there is one form of withholding they love. It is called "mortgage escrow" or "tax and loan accounts," under which bankers require borrowers to make monthly deposits against property taxes. The bankers say it is just to make sure the taxes get paid, the same argument the government uses on interest withholding, but the result is that the banks get free use of the money until the taxes are actually due to be paid. . . .

One reason Robert F. Wagner Jr. was turned down as chancellor of the New York City school system was that he lacked graduate credits in school administration normally required for the job, and the State Education Commission refused to waive the requirement, even though Wagner is widely acknowledged to be a good administrator. It is an indication of how far the disease of credentialism has spread in our society that this example of it at its most idiotic seems to have gone unnoticed and unprotested. . . .

Sometimes the prejudices of the conventional left turn out to be right. For instance, its firm belief that government favors business over people seems clearly true in the case of property assessments in the District of Columbia. According to a recent study, half of the assessments of business property are less than 65 percent of market value. The average residential property, on the other hand, is assessed at 94.1 percent of its market value. . . .

The environment is another area where the worst suspicions of the conventional left usually turn out to be more than justified. "Nearly half of all new chemicals are submitted to the Environmental Protection Agency for review without information on their toxicity," according to a *Washington Post* report of a new study by the Office of Technology Assessment, "and only 17 percent come with information about their potential for causing cancer, birth defects, or genetic mutations."

And Associated Press reports another danger. The most common lawful way to dispose of hazardous wastes is by pumping them into the ground through an injection well. "But," AP explains, "the wells can also pump wastes into the ground directly over aquifers, the underground reservoirs of water that provide drinking water." States have the power to stop this practice, but only seven have exercised it. . . .

You may recall that I view Never Leave The City Where The Good Bars Are as the guiding principle of life overseas in the State Department, in the CIA, and among the foreign correspondents of the American press. The latest illustration is that the bomb that exploded at the embassy in Beirut wiped out the entire CIA contingent for Lebanon. You may also remember that one reason the CIA had difficulty finding out what was going on in Iran after the hostages were taken was that all its operatives were inside the embassy compound when it was seized by the mob. . . .

Last month I wrote about the crucial role the OMB's budget examiners play in the operation of the government. Yet when they are hired, they are given no training to prepare them for the elaborate hustles

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and confidence games to which they will be subjected by the bureaucracies they are to oversee. Whatever instruction they receive is not planned by the OMB but is the chance result of the intelligence and experience of their supervisor and the interest he happens to take in them and what they're doing. This lack of planned training programs for new employees is true generally of the civilian side of the government and is in striking contrast to the high importance the military assigns to the training of its new personnel. . . .

When someone I know recently applied for a job at the Agency for International Development, she was advised by friends there to minimize her experience working in the Third World. The reason? She was told it might be seen as a sign that she was too liberal. . . .

Speaking of liberals, where were they when Nigeria recently expelled hundreds of thousands of aliens? What would they have said if South Africa had done the same thing? . . .

Perhaps you already know these facts about the CIA, but in case you didn't, here they are quoted from an article reprinted in the *World Press Review* from the Australian *Sydney Morning Herald*: "The budget for the CIA in fiscal 1983 has been increased 25 percent. . . .The CIA staff, which had shrunk to 14,000 during the Carter administration, is now more than 16,000. . . .Its deputy director, Admiral Bobby Inman, resigned last year largely because of the agency's use of unsavory friends, particularly former Nicaraguan National Guards."

The *Morning Herald* goes on to quote Inman as saying: "The potential value of covert action is greatly overemphasized, and problems tend to be neglected. An unfriendly government that you know may be easier to deal with than one you have helped install that does not have the capacity to govern.". . .

There's a drug called chymopapain that can help thousands of people suffering from intense back pain and save millions in surgery costs. Yet it took the FDA 19 years before it finally approved it last fall. It's not that there was evidence that the drug was dangerous. Rather, the FDA wasn't convinced that it would be effective. The reason for doubt was that it didn't seem to help some disabled veterans get well. It did not occur to the FDA that veterans on disability pensions have a very practical reason not to throw away their crutches and leap into the air shouting, "I'm cured.". . .

In February there was a conference at the University of Southern California on "Vietnam Reconsidered." General William Peers spoke and argued that the war could have been won. My own view is that the best we could have achieved was a stalemate, but that's beside the point. What concerns me is that the anti-war activists in the audience, who also disagreed with Peers, subjected him to repeated boos and catcalls. This is the man whose courageous report on My Lai was made at the cost of his military career. He should be one of the great heroes of the anti-war movement. . . .

If you sometimes detect just a hint of arrogance under *The New Yorker*'s urbanity, you will not be surprised by the response of one of its leading writers, Brendan Gill, to a question about other magazines: "I don't read other magazines. The only one I see is *The New Yorker*.". . .

Last month the District of Columbia Bar's magazine was going to press with a questionnaire inviting local lawyers to rate the local judges. The D.C. Court of Appeals heard about the questionnaire and immediately wrote the bar, "requesting" that the questionnaire not be printed. The questionnaire was yanked. As one member of the bar's executive committee explained to *The Washington Post*'s Al Kamen: "When someone with a large stick 'requests' that you move, you do it.". . .

Congressman John Kasich has been looking into the rise from fiscal 1982 to fiscal 1983 in the costs of spare parts used by the military. The price of a machine screw for the Minuteman II missile went from $1.08 to $36.77. The cost of the missile's circuit card assembly went from $234.05 to $1,111.75. And the price of a connector plug on the FB-111 rose from $7.99 to $726.86. Given the modest rate of inflation during the past year, the cynical among you might suspect that defense contractors are using Reagan's defense budget increases to give us less bang for more bucks. . . .

Another reason military budgets exhibit such a

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Courtesy of the South Carolinana Library; photo by Charles Gay

From Calhoun to Sister Boom-Boom:

The dubious legacy of interest group politics

by Phillip Longman

Courtesy of the San Francisco Examiner, photo by Chris Hardy

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There is no record that John C. Calhoun ever read or tried to write poetry. Except that once, according to a traditional gibe, he began a poem with "Whereas," and stopped.

Calhoun was bad company. "When I seek relaxation with him," complained Senator Dixon Lewis of Alabama, his principal, although reluctant, associate in politics, "he screws me only the higher in some sort of excitement."

The senator from Alabama, weighing 430 pounds, required frequent intervals of calm. Whereas Calhoun, no matter how promising the moment, would never let up with his dialectical analysis of the evils of industrial capitalism and the coming revolution of the masses in the North—thereby attempting to demonstrate at every hour and by a thousand proofs the higher good of slavery.

"There is and always has been, in an advanced stage of wealth and civilization, a conflict between labor and capital," Calhoun would hold forth, as Dixon paled. "Under the operation of the system, wages must sink more rapidly than prices 'til the operatives [the workers] will be reduced to their lowest point—when the portion of the products of their labor left to them will be barely sufficient to preserve existence."

For his peculiarly dialectical cast of mind, and for his total lack of humor, Calhoun is sometimes compared to Marx, with the difference, of course, that Calhoun was seeking to justify the South's peculiar institution. "Every plantation is a community," Calhoun would enthuse, "with the master at its head, who concentrates in himself the united interests of capital and labor, of which he is the common representative."

Had the Confederacy prevailed in its cause, Calhoun's exertions on behalf of the plantation state might have provided the intellectual underpinnings for American society. As things turned out, Calhoun didn't even make the Great Book series. For nearly a century after his death in 1850, the senator's place in the Great Adventure of Ideas was largely forgotten outside his home state of South Carolina.

Until, that is, America caught up with Calhoun, sometime after World War II. With the arrival of the modern welfare state, there arose in the land a new theory about how the American political process really worked and a new, quite unlikely idea of what it meant to be a liberal. The theory was pluralism, and its founding father, so said the theorists, was John C. Calhoun.

Herein lies one of the great ironies of American intellectual history: that on his dialectical journey to the plantation state, Calhoun paused to offer, quite unwittingly, some convincing philosophical arguments in favor of the modern "pluralistic" welfare state. This is why, in some advanced circles, there was a great revival of interest in Calhoun after the war. With but a little academic revision the theories of this splenetic, humorless racist could be made to justify the operative liberal principles of the American political system. One did not allude, of course, to his business about the virtues of slavery, but to his corollary proofs in support of powerful special interests, minority rule, and government by and for the organized.

Peter Drucker was the initial theoretician of the postwar Calhounical revival. In a 1948 essay for the *Review of Politics* entitled "A Key to American Politics: Calhoun's Pluralism," Drucker sought to rehabilitate Calhoun from what he characterized as "the partisan vote of the Reconstruction Period."

"There is almost no awareness," Drucker began, by way of defining pluralism's first premise, "of the fact that organization on the basis of sectional and interest compromise is both the distinctly American form of political organization and the cornerstone of practically all major political institutions of the modern U.S.A. . . . To find an adequate analysis of [this] principle of government. . . we have to go back almost 100 years to John C. Calhoun.

"His basic principle," Drucker continued, "that every major interest in the country, whether regional, economic, or religious, is to possess a veto power on political decisions directly affecting it. . . has become the organizing principle of American politics."

And a good thing, too, Drucker opined. For, as he concluded his essay, "the pluralism of sectional interest compromise is the warp of America's fabric—it cannot be plucked out without unraveling the whole."

Within months after Drucker published his article, the Neo-Calhounical revival spread beyond the province of the academy and into the mainstream of American intellectual culture. In a long and much remarked essay for *Harper's*, contributing editor John Fisher set out to popu-

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larize Drucker's thesis that Calhoun alone could explain and justify the actual practice of American politics.

"In other countries, each agency of government is at least presumed to act for the nation as a whole; here most agencies are expected to behave as servants for one interest or another," Fisher explained, with obvious approval. "The Veterans Administration, to cite the most familiar example, is frankly intended to look out for Our Boys; the Maritime Commission is the spokesman for the shipping industry; the National Labor Relations Board, as originally established under the Wagner Act, was explicitly intended to build up the bargaining power of the unions. . . in the Department of Agriculture under the New Deal the old [Agricultural Adjustment Administration] became primarily an instrument of the large-scale commercial farmers. . . while the Farm Security Administration went to bat for the tenants, farm laborers, and the little subsistence farmers, as represented by the Farmers Union."

Within two years, Margaret Coit produced a new, very sympathetic biography of Calhoun, following Drucker's "pluralistic" interpretation. In an enthusiastic review for *The Nation*, Arthur Schlesinger Jr. praised Calhoun's "penetrating insight into the fact that freedom derives from diversity, not from unity," and applauded his "brilliant and elaborate attempt to construct a society in which minorities would somehow be accorded, not alone the right, but the power of self-protection."

"A Calhoun revival is perhaps not inappropriate for an age like our own," Schlesinger stated. "His defense of slavery, of course, is inadmissible, but his broader philosophy has a new relevance."

There is a passion in these words that seems strange today. No one gets very excited about pluralism any more. The word imparts a vague legitimacy when conjoined with other phrases of state, as in Democratic Pluralism. It has become a notion people are generally in favor of, without knowing exactly why. Perhaps this is because of the odd feature of our times, that all rival political ideologies seem as improbable as our own, whatever that might be. Communism, socialism, and that loose collection of impulses remembered as the New Left—all seem more or less unlikely, in light of recent experiments. Accordingly, "civics" is no longer a subject of even vague debate. We divide over what is "fair" distribution, rather than contending, abstractly, the purposes of community.

Easy virtue

Do we live in a Calhounical state? David Stockman's famous trip to the woodshed demonstrates the hazards of answering yes in public. Stockman had set out, so went the celebrated story in *The Atlantic*, to sell Reaganomics as "idea-based politics." "We weren't going to get involved in tax-bill brokering of special interests," he told author William Greider. The idea was to avoid what Stockman called "constituency-based choice-making," which he took to be the fatal error of modern liberalism. Liberal politics, he told Greider, with but slight exaggeration, had lost the ability to judge claims, and so yielded to all of them.

The revival of interest in Calhoun following World War II was the beginning of an effort by liberals to make interest-group politics an intellectually respectable idea.

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The new conservatism, Stockman believed at the outset, would practice a new type of politics. It would, as Greider summarized his thoughts, "honor just claims and reject spurious ones, instead of simply serving powerful clients over weak clients." The education of David Stockman consisted of his unlearning this ideal of political virtue. "The problem is, unorganized groups can't play this game," he lamented, noting that all his efforts had only changed the list of winning clients. "The hogs were really feeding. The greed level, the level of opportunism, just got out of control," so went one famous quote. "There were no real conservatives," went another, and then, of course, the famous metaphor of the Trojan Horse.

Why were these statements so shocking? If, in the heat of battle, Stockman had forsaken his principles, it was nothing unusual, and it certainly was not news. What outraged the country, and especially Washington, was not that Stockman wound up playing the same old Calhounical game as everyone else. His offense was to reveal the details of the game itself.

Like the Victorians' attitude about sex, we do not deny that interest-group politics exist, but we expect those who engage in such activities to show discretion in relating their affairs. In his campaign debate with Reagan, Jimmy Carter is well remembered for having managed to signal every constituent group in the Democratic coalition at some point in his answers, with special phrasing designed for public school teachers. This tactic did not succeed, and, indeed, Carter came dangerously close to committing the same indiscretion Stockman did. A candidate does well to promise a single group that he will press for their agenda: to give the impression that he will simply broker for many of them is to disappoint the average voters' expectation of leadership.

This is Calhoun's legacy: while not enshrined as the public philosophy, the brokered state is now taken as a given by both political parties. All decry government by faction even as they reflexively vote for their own special interest. Prosperity is a goal all Americans share, yet in the halls of Congress, as in the workplace, labor and management push for narrow interests that ultimately betray that goal. While millions of our elderly live in poverty, the organized old have cowered Congress into continuing Social Security benefits for the wealthy. Ethnic group politics is alive and well—the latest example, Chicago Mayor Harold Washington, who explicitly appealed to blacks in his recent campaign while his opponent, Bernie Epton, just as explicitly appealed to whites. Powerful interest groups now more than ever dominate Congress, the state legislatures, and the nation's city councils, often paralyzing the political process.

This much seems obvious. Less well-known is how pluralism and its Calhounical legacy have been transformed from a description of how American politics works to an intellectually respectable theory of how it *should* work. Over the space of a generation, selected tenets of Calhoun have reappeared as commonplace notions throughout American society, finding their way into junior high civics texts and celebrated in Fourth of July orations as representative of the genius of American politics. And the story of how his ideas have insinuated themselves into modern political life goes a long way toward explaining why America has found itself in its present crisis of government—its old ideals of community, prosperity, and democracy strangely upset by the reemergence of Calhoun's pluralist manifesto.

Caucuses in bloom

Well, not really a manifesto, but an argument in passing. It could be found deep within the midsection of Calhoun's *Disquisition on Government*, copies of which reside in university libraries around the country largely because of the beneficence of the South Carolina legislature, which in 1851 mandated that the work be disseminated to "men of distinction and learning throughout the republic."

The notion in that treatise, which so enamored the postwar pluralists, is "The Doctrine of the Concurrent Majority," a cumbersome phrase whose essential idea is quite simple. To protect against a "tyranny of the majority," Calhoun wrote, "governments must [take] the sense of each interest or portion of the community. . . separately, through its own majority, or in some other way by which its voice may be fairly expressed."

Perhaps Calhoun had in mind an organism such as the American Association of Plantation Owners, although he was not explicit about this. What he said exactly is that the "powers of government must be divided and distributed," to "give to each division or interest, through its

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Courtesy of the South Carolniana Library, photo by Charles Gay

In his defense of the South's peculiar institution, Calhoun offered, quite unwittingly, some attractive philosophical arguments for the modern "pluralistic" welfare state.

appropriate organ, either a concurrent voice in making and executing the laws, or a veto on their execution." This, sure enough, appears to be pluralism, the theory that American government is, and *should* be, no more than a highly organized form of collusion with, and brokerage between, competing special-interest groups.

To the founding fathers, the notion that Washington should function as a sort of commodities pit for organized interests was straightforwardly subversive. To be sure, James Madison had acknowledged the tendency of society to break into factions, classes, and special interests. But factions, while inevitable, were anathema to Madison, and he championed the new Constitution in his tenth Federalist paper precisely because he believed that a republic spread over a large geographic area could best keep factions in check and serve the common interests of "the People."

Calhoun saw all this as nonsense. To him, the People didn't really exist, in any practical sense. "The first and leading error [of democratic theory] is to confound the numerical majority with the people," he asserted. Rule by numerical majority, Calhoun wrote, is never expressive of the People, since it "regards numbers only, and considers the whole community as a unit, having but one common interest throughout."

So even as his contemporaries relaxed in a so-called Era of Good Feelings, Calhoun brooded. The politics of slavery at last drove him into a despair of reason, and of community. It was obvious that men spoke only for their own class when they criticized the economic institutions of the South. Although a strong nationalist in his early life, in the end Calhoun concluded that no common good existed, save one: that each faction have the power to obstruct the designs of every other.

J.C.C., meet F.D.R.

Given that pluralism's roots lay in the defense of slavery, it is no small irony that Calhoun's postwar resurrection was essentially a liberal movement. The vast expansion of executive power and the proliferation of clientele agencies and programs for groups as diverse as farmers, unions, and senior citizens posed a dilemma for modern liberalism. In the classical liberalism of Locke, Jefferson, and even Hoover, the atom of politics had always been the individual, not his pressure group. But Franklin Roosevelt's policies and public pronouncements had directly challenged this time-worn assumption.

In 1936, for example, during a speech to the graduating class at Rollins College, Roosevelt offered a sociological view of politics that practically begged for a Calhounical interpretation. "There are. . . groups to which almost every man and woman is tied, connected in some way," FDR declared. "They are connected with some form of association—the church, the social circle, the club, the lodge, the labor organization, the neighboring farmers, the political party. Even business and commerce are almost wholly made up of groups.

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"It is the problem of government to harmonize the interests of these groups which are often divergent and opposing," Roosevelt continued. "The science of politics, indeed, may properly be said to be in large part the science of the adjustment of conflicting group interests."

Of course, amidst the misery of the Depression, relief efforts aimed at broad groups rather than individuals seemed appropriate. The day Roosevelt took office, banks were on the verge of collapse, unemployment stood at 25 percent, and the nation's farmers were in a decade-long decline that had not yet seen the worst of the Dust Bowl. Government relief officials had no time to go door to door to ensure that only truly needy Americans received government help—particularly since so few would have been found ineligible. And while undeserving people demanded their share of government largess most Americans were willing instead to make small sacrifices in the name of a larger good: ending the Depression. Such idealism was also strong during World War II. The nation embraced another common purpose—winning the war—and to that end Americans continued to make sacrifices, from rationing scarce goods such as gasoline to dying for their country.

The Allies' victory brought an end to the nation's 15-year nightmare, but in so doing raised some disturbing questions about the kind of government Roosevelt had left behind. The powerful federal agencies Roosevelt created had grown into middle age. However, Roosevelt had shown little inclination of dismantling them as the war brought the domestic economy out of the Depression, and they were now difficult, if not impossible, to dismantle. As Fisher had observed, most people now assumed their continued presence on the political landscape—and for most liberals of the era, that was exactly as it should have been.

John Kenneth Galbraith, most preeminently, recognized and applauded the contradiction of the old liberalism and the new. The business of liberalism, after Roosevelt, had changed: it was to take up the side of weaker special interests, he declared, to provide them "countervailing power" with which to resist the predations of the more easily organized. Indeed, Galbraith ventured, "the support of countervailing power has become in modern times perhaps the major peace-time function of the government."

It followed for Galbraith, as it did for other apologists of New Deal liberalism, that government ought to embrace at least some factions, that justice was served by deferring to and even promoting certain "minority" interests. As Richard Hofstadter pointed out, in a 1949 essay entitled "Calhoun and the Dixiecrats," Calhoun's only objection to modern liberalism would be that it brokered to the wrong "minority interests" (e.g., blacks), not that it promoted minorities per se.

The politics of niceness

What was it about the late forties that compelled liberal intellectuals to seek accommodation with the ideology of the antebellum South? In part, Calhoun's celebration of compromise and stalemate appealed to the national yearning for normalcy after a long period of depression and world war. The impulse for security was perfectly understandable—this was a generation that had had its rendezvous with destiny, and lost many of its members in the process. It was a time to put activism and sacrifice aside, to pursue more personal needs: a college education on the GI Bill, a family, perhaps a secure corporate career as an "organization man," and a bungalow with a patio.

Though many intellectuals mocked the emerging barbecue culture of the new middle class, or gravely pondered such woolly issues as conformity in a Mass Society, much sophisticated opinion during this era also reflected a common sense of exhaustion. The intellectuals could turn their energies to the cultural and literary concerns exemplified in *The New Yorker*; pluralist academicians like Arthur Bentley and David Truman could find secure teaching posts that gave them plenty of time for leisurely seminars while they pondered the meaning of postwar prosperity. True, there were spasms of idealistic ventures during this period—the World Federalist Movement, the Marshall Plan, in certain respects the Korean War—but they fell victim to indifference and disillusionment among most Americans. A revival of Calhounism, according to which all viewpoints were worthy but no cause so important it demanded personal sacrifice, seemed appropriate for the age.

Less subjectively, there was also the issue of how the good life was going to be paid for. The New Deal had been passed as a series of national emergency acts, but by the time the emergency was over, even middle-class Americans felt entitled to the beneficence of a strong, central government.

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Courtesy of the Mondale for President Campaign Committee

The economy's failures show that the logic of the pluralist debate must be reversed. The brokered state can no longer be said to create prosperity, but to undermine it.

The GI Bill, subsidized VA and FHA mortgages, the National Labor Relations Board, Social Security, and a host of other government programs made possible the postwar idea of what it means to be middle class. Any argument that could justify more social spending for the middle class, under a more or less automatic system of brokerage and interest-group politics, was bound to find a prominent place in the public imagination.

It was also useful, especially for liberals, to find a vessel that offered a safe passage between the extremism of the right and the left. In 1946 the Republicans regained control of Congress for the first time since 1928, and able conservatives such as Senator Robert Taft were calling for the dismantlement of much of the welfare state. Pluralism offered a ready argument in opposition, while at the same time it treated conservatives respectfully, as an identifiable group whose ideas deserved to be listened to. With the later rise of anticommunism and the vicious excesses of Joe McCarthy, pluralism also provided a ready answer to the red-baiters, for it celebrated diversity and dissent as the key to America's strength.

Liberals of the era also faced peril from their left flank. Henry Wallace's Progressive party was infiltrated by communists and rife with those blind to the horrors of Stalinism; his debacle in the 1948 election made many liberals seek shelter elsewhere. The Americans for Democratic Action, for example, was formed by liberals splitting from the Progressive party because of its refusal to expel communists. The ADA became a staunchly anticommunist group, though it denounced McCarthy's methods in its strict adherence to interests such as organized labor, a good example of pluralism at work.

Pluralism offered a third—and distinctly American—way between these ideological extremes. As Drucker observed, the great virtue of Calhoun's updated philosophy was that "it makes it almost impossible for the major parties to become entirely irresponsible: neither party can afford to draw strength from the kind of demagogic opposition, without governmental responsibility, which perpetually nurtures fascist and communist parties abroad."

During the 1950s, pluralism quickly insinuated itself into the prevailing public philosophy. But Calhoun himself disappeared from the popular literature almost as quickly as he had appeared. Suddenly, civil rights for blacks had once again become a rancorous issue: the Dixiecrats bolted from the Democratic party in the 1948 election (led by another South Carolinan, Strom Thurmond), and Northern liberals were forced to recall that Calhoun truly belonged to the forces of reaction. After the *Brown* decision and Little Rock, how much more embarrassing the Calhounical revival of the previous decade must have seemed; after Selma, its memory must have brought intense pangs of liberal guilt. Only gross insensitivity could have allowed liberal opinion to celebrate the theories of this unabashed slave

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master, while dismissing his thoughts about states' rights and white supremacy with an air of intellectual bemusement. Pluralism would have to do without a founding father.

So pluralists turned to the academy. Pluralist analysis became a minor cottage industry at the nation's colleges; the most famous product was Robert Dahl's *Who Governs*, a book that detailed the workings of New Haven politics. The academicians didn't celebrate pluralism so much as use the notion to gain insights into politics; some, like Dahl, have expressed misgivings about its larger implications. But that didn't matter so much as the fact that pluralism was gaining acceptance as the American Way of Politics. Candidates were only too happy to embrace the theory, gearing their campaigns to the Catholic Vote, the Labor Vote, the Suburban Vote, or the Slavic Vote. Winning elections became a matter of stitching enough interest groups together to guarantee 51 percent of the vote.

The view from the fringe

A few voices of protest appeared during this period, but it was a testament to pluralism's power that most became co-opted by the very theory they had originally hoped to overcome. One of the most prominent dissents came from the New Left. The original manifesto of the Students for a Democratic Society, "The Port Huron Statement," written in 1962, now reads as an attack on everything Calhounical in American society. Tom Hayden and his youthful collaborators urged "the establishment of a democracy of individual participation." The specific objection was to the eclipse of the individual in a pluralistic state; the early SDS was "governed by two central aims: that society be organized to encourage independence in men and provide the media for this common participation."

Here, in its first blush, the New Left revealed its oft-remarked romanticism and celebration of the individual over the group that ultimately led many to retreat from politics into the solipsism of self-liberation. But the original intent was straightforward: the reinvention of the public man, and the rediscovery of civic virtue.

The New Left attacked the pluralistic state on another valid point: its failure, up to that time, to offer brokerage to certain weaker special interests, specifically blacks, migrant workers, and the young. Surveying the terrain of American politics in 1965, the New Left theoretician Robert Paul Wolf likened the distribution of power to "a plateau with steep cliffs on all sides rather than a pyramid. On the plateau are all the interest groups which are recognized as legitimate; in the deep valley all around lie the outsiders, the fringe groups which are scorned as 'extremists.' The most important battle waged by any group in American politics is the struggle to climb onto the plateau."

Preoccupation with "the fringe groups" was, of course, a defining feature of the New Left. It was also the source of an essential contradiction. Did

For liberals, the business of government after Roosevelt had changed dramatically. Government was no longer expected to discourage special interest groups, but to broker between them.

photo by Frank Alexander—Merkle Press

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photo by Diana Walker

Entitlement programs such as Social Security resemble an airdrop: we cast bushels of money from above and hope some of it flutters down to the truly deserving.

the antidote to pluralism entail breaking up this system of brokerage and collusion, in restoring freedom to the individual and power to the public, as the early SDS had maintained? Or was it more important to expand the pattern of interest-group politics, to force the system to broker between still more categories of special interest—migrant workers, welfare mothers, black militants, tenants, draft evaders, women, and homosexuals?

As the sixties became more complicated and confrontational the New Left gravitated towards the second strategy. Once it was accepted that minorities required more than legal sanctions against discrimination to overcome poverty and discrimination, the path of least resistance seemed to lie in promoting affirmative action, bilingual education, special entitlement programs, and the "maximum feasible participation" that Daniel Patrick Moynihan made famous in his study on the War on Poverty. The allocation of jobs, graduate school admission, and public funds was to be based not on individual circumstance but according to membership in a particular group—just as pluralism prescribed it should be.

Amid the prosperity of the postwar era, it was relatively easy to bring previously excluded interest groups into the brokering process, since the price of admission seemed relatively low. And if one objected that pluralism was unprincipled, it was easy to retort, especially after the Great Society, that broker rule was a necessary price to pay for "progressive" change. Troublesome groups could be bought off with entitlements and customized government programs; political fortunes could be made on the willingness to pay the price. Both parties happily played the game; the greatest increase in entitlement spending, in real terms, would come under the Nixon administration.

Slicing the pie

Pluralism thrives on affluence and seemingly safe times, in which the virtues of a pluralistic state—tolerance of diversity, compromise, pragmatism—outweigh the one deadly fault of government by faction: its inability to pursue a common public interest. But today the evident failure of the American economy shows that the logic of the pluralist debate has to be reversed. No longer can pluralism be championed as the driving force behind America's prosperity. In fact, what has become self-evident is that interest-group brokerage is not the genius of the American system, but one of its biggest flaws.

As Mancor Olsen has pointed out in his recent book, *The Decline of Nations*, special-interest groups will always realize greater profit by bargaining for a larger share of the existing commonweal than by joining in measures that ensure a greater commonweal for all. A union, industry, or age group that wins a greater share of the existing collective wealth through such devices as tax breaks, entitlement programs, and trade protection need divide the gain only among its own members. In contrast, the return to each group,

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and to each individual within a group from an increase of collective wealth is small by comparison, because the collective gain must be divided among everyone.

In an unabashedly pluralistic state, there is widespread support for economic growth, but little desire by any particular group to actively promote it. Instead, groups focus their energies on rearranging existing assets—in Robert Reich's phrase, slicing the economic pie rather than enlarging it—while the expansion of the economy's productive capacity is neglected. And as the engine of growth is taken for granted, like a badly maintained motor, it first sputters and eventually grinds to a halt, hopelessly clogged by accumulated demands. So it has been with our economy, and the symptoms are everywhere: persistent inflation, constantly rising unemployment, "recoveries" that never return the economy to previous levels. No longer expanding, the economy instead seems to be clinging precariously to a slippery slope—and slowly slipping downward.

Government's response to this adheres to the pluralist ideal, and accordingly contributes to the economy's plight. Large government deficits satisfy the financial demands of various factions; at the same time, capital expenditures for infrastructure and increased productivity are neglected. The amount the government spends each year just to cover the deficits of the Social Security retirement fund now exceeds the combined net investment in plant, equipment, research, and development of all private companies in the United States. Interest payments on the national debt will consume 11 percent of the government's operating budget this year. These are not the sort of arrangements that lead to future prosperity, but they are the logical outcome of trying to satisfy the voracious appetites of a myriad of interest groups.

The most debilitating aspect of pluralism is entitlement spending—the massive transfers of public wealth to selected citizens based solely on their membership to groups. The concept of entitlements has a long history; as Michael Walzer relates in his book *Spheres of Justice*, 5th century Athens spent one half of its revenues on entitlements, giving a substantial stipend, regardless of need, to all citizens who held public office, served on the Council, attended the Assembly, or sat on a jury. In the United States, it was during the New Deal, with its large transfers of government wealth to farmers, veterans, the elderly, and other groups, that entitlement spending became widespread.

Entitlements have some justification if the members of the recipient group are otherwise deserving. Fifty years ago, for example, most senior citizens were needy, so Social Security made a great deal of sense. Today, the elderly as a group are better off than the rest of the population, yet Social Security continues to be distributed regardless of need. While money is given to the rich, millions of the nation's elderly still receive too little for a decent life.

A commitment to redistribute the nation's wealth in the name of compassion presupposes an accurate conception of who is poor and who is not. Yet the best analogy to current patterns of entitlement spending would be that of an airdrop. Flying over a certain neighborhood in an airplane, we

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know that somewhere below are citizens living in scandalous poverty. But rather than go door to door and seek out those who need our help, we cast bushels of dollars over the entire area, hoping that some of the loot will flutter down to the truly deserving.

Politically, of course, such methods of redistribution have been very popular. The middle and upper class receive all sorts of benefits intended for the poor, bureaucracy is kept to a minimum, and everyone avoids the "humiliation" of a means test. But ultimately, the money runs out, the poor are still poor—and everyone feels overtaxed.

Revive majority rule

What is the alternative to pluralistic, or interest-group liberalism? It is unsettling to recall that coincidental with the postwar Calhounical revival, there arose a countermovement, centered on Friedrick Hayek, Ludwig von Mises, Milton Friedman, and the Mont Pelerin Society. In its early days, it used the term "neoliberal" to describe itself. What later became the libertarian movement was started by people who saw themselves as the true defenders of classical liberalism, as opposed to the broker-style liberalism of FDR. To re-travel this road returns one to an old neighborhood now taken over by rather undesirable types. The present inhabitants show little compassion for others, they deride the idea of community, and they would rather live amidst appalling conditions than co-operate in any collective endeavor. These are now mean streets, but the neighborhood, undoubtedly, can be made to come back.

There is really no alternative. It is not just that government by stereotype is often unfair to individual interests, or that a brokered system of distribution ultimately serves to evaporate any political constituency for economic growth. Government by, and for, the organized simply winds up being too inefficient, and expensive, because it squanders resources on individuals who are not needy or otherwise deserving of special privilege.

The best hope for destroying the broker state lies in appealing directly to two groups of American citizens. Both the poor and the typical taxpayer are now shortchanged by the pluralist state. What gains come to the former under current pluralistic arrangements are substantially inadequate, in large part because limited public resources are divided by entire groups and generations rather than parceled out only to those in need. Though almost all taxpayers belong to some group that receives special privileges from the government—veterans, parents of college students, mortgage holders—as long as the collective demands of all special interests exceed the commonweal, the majority of taxpayers will always pay more tribute to other groups than their own faction receives in turn.

There is no shortage of pluralistic-inspired programs for this alliance to challenge: Social Security for the rich; unemployment benefits for the deliberately idle; overly generous civil servant pensions; interest deductions for second homes; veterans benefits for millionaires; subsidies to prosperous farmers; tenure for incompetent teachers. But the challenge cannot be one of deprived interest groups against the well entrenched ones; that will only cause the common interest to become more fragmented and even less discoverable, as occurred in the wake of the New Left's challenge. Rather, the challenge must be brought in the name of much broader goals—the improvement of our public schools, the reconstruction of our dilapidated infrastructure, economic growth.

Here lies the possibility for an entirely new coalition for an entirely new style of liberalism: the truly needy allied with the truly overtaxed. The idea is paradoxical, but firmly validated by the arithmetic of a society in deficit. A simple majority could easily be formed by these two classes of citizens, and American politics remade. The ironic conjunction of interest between the needy and the broad range of middle-class taxpayers can form the political basis for a liberal agenda that combines compassion with thrift, fairness with equity, individual interests with collective interests.

This is not to say that the virtues of pluralism—its tolerance of diversity, its theoretical protection of minority interests, its ethos of compromise—should be discarded. At the same time, what Calhoun's example should teach us is that ideas can be made to serve many ends, and that intention is logically separate from result. The ends of liberalism are no longer being served by its means. The time has come to go beyond pluralism—and to put to rest the legacy of John C. Calhoun, once and for all. ■

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MEMO OF THE MONTH

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FM BROADCAST APPLICATIONS ACCEPTED FOR FILING AND NOTIFICATION OF CUT-OFF DATE

Released: March 21, 1983

Report No. B- 36

CUT-OFF DATE: April 29, 1983

NOTICE is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications listed were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with the applications listed in the attached appendix will be accepted for filing.

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WHO'S WHO in the Administration

No one may ever again attain the mastery over White House perks and status badges that **Bill Gulley** demonstrated during his long reign as director of the White House Military Office under Presidents Johnson, Nixon, and Ford. But Gulley's counterpart in the Reagan administration, presidential assistant **Edward V. Hickey Jr.**, appears to be upholding the legacy. If you want a beeper, a White House phone in your home, a TV in your office, or a car or plane to dispatch you to your destination, word in the White House is that you first have to clear it with Ed. . . .

Behind the enmity within the Reagan administration for the **James Baker/David Gergen/Richard Darman** faction lies a lot more than jealousy and personality differences. For all their considerable talents, these men are viewed by ideological conservatives as part of the "survive tomorrow" side of Washington, motivated not by the hope that the right cause will prevail, but by a desire to wake up the next morning with one's power undiminished. Anyone who's worked in government for idealistic reasons knows that nothing grates on a true believer more than members of the "survive tomorrow" crowd, who often come to be perceived as the worst enemies of all. . . .

Around the halls of the CIA, director **William Casey** is famed for his frequently unintelligible pronouncements. Indeed, Casey is referred to as the first CIA chief who acts as his own scrambler. . . .

In

WHITE HOUSE

Director, Personnel Office—**John S. Herrington** has been special assistant to the Joint Chiefs of Staff.

Social Secretary—**Gahl Hodges** has been deputy chief of protocol for the State Department.

Deputy U.S. Trade Representative—**Robert E. Lighthizer** has been chief counsel for the Senate Finance Committee.

DEFENSE

Army Vice Chief of Staff—**Maxwell R. Thurman** has been deputy chief of staff for personnel.

Assistant Secretary of the Navy for Manpower and Reserve Affairs—**Chapman Beecher Cox** has been deputy assistant secretary for logistics.

ENERGY

General Counsel—**Theodore Garrish** has been an assistant to Secretary Donald P. Hodel.

JUSTICE

Associate Attorney General—**D. Lowell Jensen** has been assistant attorney general in charge of the criminal division.

LABOR

Inspector General—**James Brian Hyland** has been deputy inspector.

STATE

Ambassador at Large and Special Envoy to Central America—**Richard Stone** has been the president's personal representative in Central America.

Deputy Assistant Secretary for African Affairs—**Leonard H. Robinson Jr.** has been director of the international development study center.

Ambassador to Costa Rica—**Curtin Winsor Jr.** has been president of the Winsor Pittman Coal Co. in West Virginia.

Ambassador to Madagascar and Comoros—**Robert B. Keating** has been a consultant to the Navy's office of general counsel.

Ambassador to Sierra Leone—**Arthur W. Lewis** has been director for African affairs for the U.S. Information Agency.

TRANSPORTATION

General Counsel—**James H. Burnley IV** has been associate deputy attorney general.

AGENCIES AND COMMISSIONS

Member, Federal Home Loan Bank Board—**Donald I. Hovde** has been an undersecretary for the Department of Housing and Urban Development.

Member, Federal Maritime Commission—**Robert Setrakian** has been president of Mid-State Horticultural Co. of San Francisco.

Out

COMMERCE

Deputy Secretary—**Guy W. Fiske** has resigned.

HEALTH AND HUMAN SERVICES

Director, Centers for Disease Control—**William H. Foege** has resigned as director but intends to stay on at the CDC.

TRANSPORTATION

Administrator, National Highway Traffic Safety Administration—**Raymond A. Peck Jr.** has resigned.

AGENCIES AND COMMISSIONS

Director of International Activities, Environmental Protection Agency—**Richard Funkhouser** has resigned in the midst of a House subcommittee investigation but continues to consult for the agency.

Member, Federal Communications Commission—**Anne P. Jones** has resigned to return to the private sector.

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THE STORIES THAT ARE TOO GOOD TO CHECK

DAMN THE FACTS, FULL SPEED AHEAD!

BY HERMAN GORDON

Last Thanksgiving the national news media got wind of one of those stories that White House press officers have nightmares about: while supping in opulence at his ranch in California's Santa Ynez mountains, President Reagan was readying a plan to tax the unemployment benefits then going to six million of the nation's 11.9 million jobless. The story, leaked to George Skelton of the *Los Angeles Times*, first appeared on Thanksgiving morning; by Saturday, after a blizzard of damning newspaper and television reports, a chastened Ronald Reagan assured the nation, "This is not the type of thing I want to do." The press was congratulated for staying alert during what was expected to be a subdued holiday weekend, and the incident was widely interpreted as a victory at the expense of a coldhearted, bumbling administration.

So when those six million filed their 1040 forms this April, they were probably surprised to find that some unemployment benefits were subject to taxation after all. Did the president sneak the change through Congress when the fuss had died down? Did the Internal Revenue Service decide to take matters into its own hands and legislate by administrative fiat? Wrong on both counts. There's a very simple explanation: unemployment benefits were already taxable and had been since 1979.

Whether you chalk it up to ignorance or carelessness, this fact was completely overlooked by some of the nation's most prominent news organizations and muddled or obscured by the rest. It's no exaggeration to say that the handling of what came to be known as Reagan's Thanksgiving Turkey was a blemish more on the competence of the press than on the compassion or political savvy of the president.

First, let's consider those who gave no evidence of having the slightest idea that unemployment benefits were already taxable. As Americans prepared to carve the turkey on November 25, Dan Rather led off the CBS Evening News with the startling announcement, "President Reagan's advisers have given him a package of proposals on the economy, including, *for the first time ever*, a proposed tax on unemployment benefits." (Emphasis mine.)

It wasn't only ignorant anchormen who got the story wrong. Six days after Rather's on-the-air goof, Rowland Evans and Robert Novak, those consummate "insiders" of conservative Washing-

Herman Gordon is a former associate director of public affairs for the Environmental Protection Agency.

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ton, were still flubbing it. In their December 1 syndicated column, they offered a postmortem of White House machinations that produced a "well-intentioned leak reflecting political naivete rampant in this administration." The column explained that the plan was set forth in a 16-page staff report by the cabinet council on economic affairs, among whose members was chief economic adviser Martin Feldstein, a longtime advocate of taxing unemployment benefits. The report had flown west with the president for a long Thanksgiving weekend, but he hadn't read it before it appeared in the *Los Angeles Times* on the 25th. After the White House press corps received a "thorough briefing" by Speakes that day, it appeared as a page one story throughout the country on the 26th. Evans and Novak suggested that all this reflected a basic lack of coordination between the White House "politicians," led by chief of staff James Baker, who presumably would never allow such a political "turkey" to be floated on a holiday weekend when millions were out of work, and the "technicians," led by Edwin Meese, who heads the cabinet council, and thus presumably bore some responsibility for an idea that even conservatives like Evans and Novak found (politically, at least) abhorrent.

Fascinating stuff. But while Rather delivered his breathless scoop and Evans and Novak huffed and puffed to get all this inside baseball, they neglected to mention what a quick peek at line 20 of their 1040 forms could have told them: that unemployment benefits were already taxable.

Initial reports on the "new tax" on unemployment benefits by David Hoffman of *The Washington Post* and Francis X. Clines of *The New York Times* managed at least to acknowledge that there was an existing tax on unemployment benefits. Their stories, both of which appeared on page one the day after Skelton's story broke in the *Los Angeles Times*, explained that existing law subjected benefits to taxation if total income exceeded $12,000 for a single return or $18,000 on a joint return. Clines was a bit more conscientious about emphasizing this point; he managed to get it into the seventh paragraph of his

Live from the West Wing, it's . . .

Being a White House correspondent usually means two things: status on the Washington party circuit and boredom in the press room. At daily White House briefings, press secretary Larry Speakes spends most of his time reiterating previously distributed press releases, rarely uttering anything of real value. Why don't these media superstars spend their time looking for real stories? In part because they're busy hunting for the ultimate one-liner to rival those of Jane Curtin and Chevy Chase of Saturday Night Live. Given this obsession, it's easy to see how a story like taxing unemployment can be misreported: the facts might ruin the joke.

In an administration as prone to gaffes as this one, a little humor has its place. But a review of briefings between reporters and Larry Speakes shows why the press should stick to the news and leave the comedy to someone funnier.

Reagan's criticism of bank lobbying to repeal interest withholding gave us this lively exchange:

Q: Were you present when the president threw his glasses and started talking about his keister and—(laughter)
Speakes: I was. I was.
Q: Can you describe in your own words what it looked like, how far the glasses went (laughter) . . .
Q: Did they go as far as his keister? (laughter)
Q: —the glasses. . . .
Q: What specifically did he say, Larry?
Speakes: I think the quote is a little bit misinterpreted, but he said, "I've had it up to here with the bankers."
Press: Ah.
Speakes: "They're sitting on their keisters when they could be lowering interest rates."
Q: So, it's their keisters he's interested in. (laughter)
Q: Is that a paraphrase?
Speakes: Pretty accurate paraphrase.
Q: They're sitting on their keisters or his keister?
Q: —bank officials . . .
Speakes: Yes, and when they should be lowering interest rates.
Q: Could be or should be?
Speakes: Should be, could be, either one.
Q: Had it up to here, you said? Up to here?
Speakes: Yes. Pretty high. (laughter)

These wags are rarely satisified with oblique anatomical references; they'll spell it out if they think there's a laugh in it:

Q: Yes, and what she says is that she was doing what she did because she thought the director—the administrator, Anne then Gorsuch, wanted her to do it that way. And we have yet to hear about Anne Gorsuch's contacts with the White House and what the intercourse was there. (laughter)
Speakes: To coin a term, huh?

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story, before the "jump" to an inside page. Hoffman got it in after the jump. But in two subsequent stories by Hoffman and two out of three follow-ups by Clines, this fact was conspicuously absent. Nor was it mentioned in a brief rundown of the week's efforts "to do *something* about the dead-in-the-water economy" in the November 28 *New York Times* Sunday "Week in Review" section.

Both the *Post* and *The New York Times* are on record as getting the story right at least once, but subsequent misleading stories that suggested the unemployment tax was a new idea probably did more damage than an initial misleading story would have done, for as time wore on tempers mounted. Irving R. Levine of NBC News, for instance, was out getting the man-on-the-street story on November 26, soliciting outraged opinions from unemployed workers in Pittsburgh and Cambridge, Massachusetts. Even *they* didn't seem to know that unemployment benefits were taxable. "To think that the amount you get from unemployment isn't enough that you need anyway, without having to be taxed on it," complained one woman. If the message wasn't getting through to the affected parties, clearly it was also slipping past the nation as a whole.

As a concerned citizen, I decided to register a complaint. On the morning of November 26, I called the *Post*'s national news desk to point out it was creating the impression that a new tax was about to be proposed. The gentleman at the other end of the line was unimpressed. The following day, after the *Post*'s second article, I called Robert McCloskey, the *Post*'s ombudsman, who defended the paper by stating that while the *networks* may have misled the public,the *Post*, after all, did mention the existing law.

I was greatly encouraged when I opened my December 3 *Washington Post* to an ombudsman column on the jobless tax story. But to my chagrin, I found it had nothing to do with the *Post*'s poor reporting on the existing tax. I could not honestly figure out what the "ombudsman" aspect of the column was, but I *think* what had engaged McCloskey's attention was whether the *Post* was

. . . the White House press corps!

Q: No, no. It's a good English word.
Speakes: Absolutely. Okay. Ben.
Q: The oral intercourse.
Q: You would agree, wouldn't you, that the way you're going about this review, you're—
Speakes: Got to get his kicks some way. (laughter)
Q: —got to leave town.

Inevitably, these exchanges deteriorate to the point where Larry Speakes is simultaneously emcee and victim:

Speakes: No. But if I were advising any member of the White House staff, I would advise them to keep their toe out of that water.
Q: Has he advised them as such?
Speakes: No.
Q: Well, how would you? I mean, who are you?
Speakes: Pardon?
Q: I mean, why?
Speakes: If it were me
Q: How do you get this impression? (laughter)
Speakes: If I were so inclined to do it, I would not if I wanted to stay here tomorrow.
Q: Who are you? (laughter)

Even embryos are fair game:

Q: In his speech on Friday night, as you recall, the president said that "the unborn child has the right to life, liberty, and the pursuit of happiness." Now, since the unborn child is at one stage of its development—in the embryonic—could you, as the presidential spokesman, tell us how an embryo, which is attached to the wall of the uterus, goes about pursuing happiness? (laughter) And don't refer it to Ann Compton, either, Larry. That's a cop-out. How do you explain this about pursuing happiness of an embryo, Larry? How does that work?
Speakes: I think, Lester, that you should go to medical school and become an Ob-Gyn and you would be happy.

But when all else fails, it's time to fall back on an old standby:

Q: Trees. He's very fond of trees. Trees.
Speakes: —operations to—
Q: Killer trees.
Speakes: Brady's up there listening. He'd be down on you in a minute.
Q: Come on Brady, killer trees.
Speakes: Okay. Did you have a question, David, or do you give up?

Amidst this kind of chaos, it's not surprising that many a veteran journalist temporarily loses his bearings. One reporter, distracted after several one-liners and other interruptions, actually had to ask Speakes, "What was my question?"

—James Gibney

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Dan Rather's breathless announcement and Evans and Novak's inside account told you everything you needed to know about Reagan's plan to tax unemployment benefits—except the fact that they were already taxable.

fair to its readers in failing to make clear whether it was the president or someone else in the White House who proposed the tax.

The widespread misconception that taxing unemployment was a new idea led to some predictably fatuous opinionizing. One example is in an article by Robert Pear that appeared in the November 27 *New York Times*. Pear wrote that economists were saying that "the [Reagan] proposal [has] sweeping implications because it could be a first step toward taxation of other benefits paid by the federal government. Over the years many people have proposed taxing Social Security benefits, which are exempt from taxes." Didn't those economists know that unemployment benefits were already taxable, and that thus the first step had already been taken?

I don't mean to suggest that all this confusion was entirely the fault of the press. (It certainly wasn't the fault of George Skelton; his initial piece in the *Los Angeles Times* explained in the third paragraph that benefits were already taxable, which may be why this "scoop" was relegated to page four, wedged between a Peanuts cartoon and an ad for the Farmer's Market.) When things started to get out of hand, thanks to inaccurate television reports like Dan Rather's, administration officials should have launched a counteroffensive. They should have stated quite plainly that this proposal was nothing new, that all the cabinet council had proposed was. . . um . . . .

Come to think of it, what *did* the cabinet council propose?

It's tempting to think that Martin Feldstein and his merry cohorts proceeded blithely along with a proposal to tax unemployment benefits without even checking to see whether Congress and the IRS had ever actually done it. Feldstein is entitled to feel somewhat proprietary about the idea; he could lay claim to it at least as far back as 1974, when he wrote an article in the *National Tax Journal* proposing it. This was five years before the idea became law.

The strongest piece of evidence I have to support this theory comes from a phone call I placed to the White House on November 27 to find out just what was being proposed. I was connected with a Jennifer Johnson, a public affairs specialist at the Office of Management and Budget. When I stated I would like to discuss the proposal, she said, "There is nothing to discuss."

I said to Johnson, "Are you sure there is nothing to discuss? What does it mean to you when the press gives the impression that someone in the White House proposes to tax unemployment benefits for the first time even though such a tax already exists?"

She said the existing tax was news to her.

Because the White House hierarchy begins rather than ends with Jennifer Johnson, one can't conclude that her ignorance is shared at the higher rungs. And in fact it isn't. Long after I'd waded through countless newspapers, magazines, and transcripts of TV news broadcasts, all purporting to tell me what that famous 16-page memo said, I finally got a look at the memo. Under the heading "Extend the taxation of unemployment insurance benefits," here is what it said: "This proposal calls for lowering (possibly to zero) the income threshold above which unemployment compensation benefits are taxed. The funds raised could be earmarked to initiatives to combat unemployment. Federal legislation to reform the tax code would be required."

Under the heading "Cost and coverage," it went on: "The amount of the revenue raised would depend on how far the threshold was lowered. Taxing all unemployment insurance benefits

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would raise $1.9 billion in 1983 and '84. A reduction in the income threshold to $12,000 for married couples and $8,000 for single persons would raise $600 million per year in '83 and '84."

While taxing all unemployment benefits may be too draconian, giving a tax break only to those who need it is not an unreasonable idea. But with few exceptions, the press wasn't interested in exploring that aspect of the story. (To its credit, the *Post* did run a column by economist Alan Blinder, a Democrat, who explained why the general idea was even quite sensible.) Most White House reporters and their editors were interested in another story: a president who was reveling in holiday plenty while the jobless of South Succotash and everywhere else were struggling to make ends meet.

So what if it was the Democratic administration of Jimmy Carter that had been responsible for establishing the principle of taxing the unemployment benefits of the laid-off steel worker in Pittsburgh? What difference did it make that Congress had subsequently lowered the limit once already? That certainly wasn't going to get in the way of a good story. And if the public had wanted the truth? Well, they could always have turned off the TV news and taken a look at their 1040 forms. ■

Too Hot To Handle?

Social and Policy Issues in the Management of Radioactive Wastes

edited by Charles A. Walker, Leroy C. Gould, and Edward J. Woodhouse

How can we handle and dispose of nuclear wastes safely? In this timely book, eminent specialists in a variety of fields present technological, public health, political, social, psychological, and ethical perspectives on this crucial problem.

"Raises the problem of radioactive waste disposal to a major issue.... A balanced, sober book; highly recommended."
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THE WASHINGTON MONTHLY

Journalism Award

for March 1983 is presented to

Ted Gup
The Washington Post

In a four-part series on the Smithsonian Institution's $100 million collection of gems and curator Paul Desautels, Gup exposes some of the highly questionable business practices that often go unquestioned when performed by museums rather than corporations. Particularly revealing is the widespread practice of investors donating minerals with grossly inflated values to the Smithsonian for tax-evasion purposes.

NOVA
WGBH-TV (Boston)

This reconstruction of events during the nuclear accident at Three Mile Island illustrates the high potential of television journalism. Using extensive interviews, post-accident reports, and NRC hearings, the producers give one of the clearest and most dramatic acounts of the mechanical and bureaucratic failures that turned a routine "incident" into a near-nuclear meltdown.

The Washington Monthly wishes to recognize the writers and publishers who share our purpose of trying to describe how the political system really works, to determine why it succeeds, and why it fails, and to suggest ways in which it might be improved.

The **Monthly Journalism Award** is presented each month to the best newspaper or magazine article (or series of articles) on our political system. Nominations from any newspaper or magazine in the country are welcome. The subject can be government in its federal, state, or municipal manifestation.

The award for articles published in May and June will be announced in the September issue. Nominations will close July 15. Nominations should be accompanied by two copies of the article or articles.

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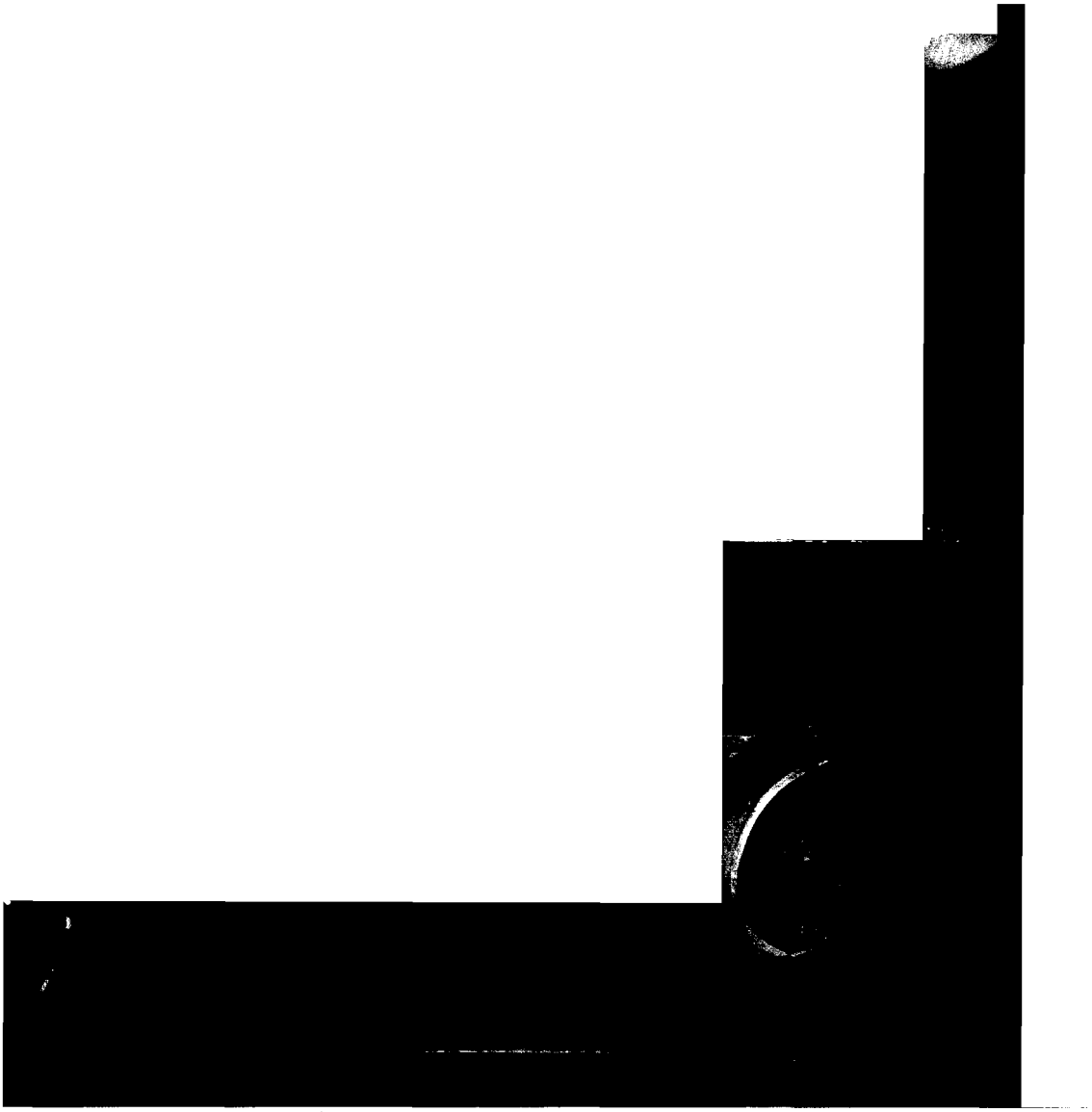

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When the all-pervasive darkness of night begins, driving becomes more hazardous. Darkness obscures visibility and shortens reaction time. And if you happen to be driving with the world's most precious cargo, we know how the difficulties of the night can make you a little anxious.

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All new Ford, Mercury and Lincoln cars have halogen headlamps that provide whiter illumination than conventional headlamps. And unlike conventional headlamps, even if a stone happens to crack the lens—you won't be left in the dark. The halogen headlamps will still function, allowing time to replace them, since they have an inner bulb. Our cars also have fuel-efficient steel-belted radial tires, many with an all-season tread, as standard equipment. We're the only major American manufacturer that offers both halogen headlamps and steel-belted radial tires as standard equipment on all our car lines.

Many Ford Motor Company cars have an illuminated entry system that lights up the car's interior while the door is still locked. Our

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Of The Dark.

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And we know that can be terribly important when you're coming home at ten o'clock at night with the world's cutest bunny rabbit.

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DIMINISHING RETURNS

The false promise of direct mail.

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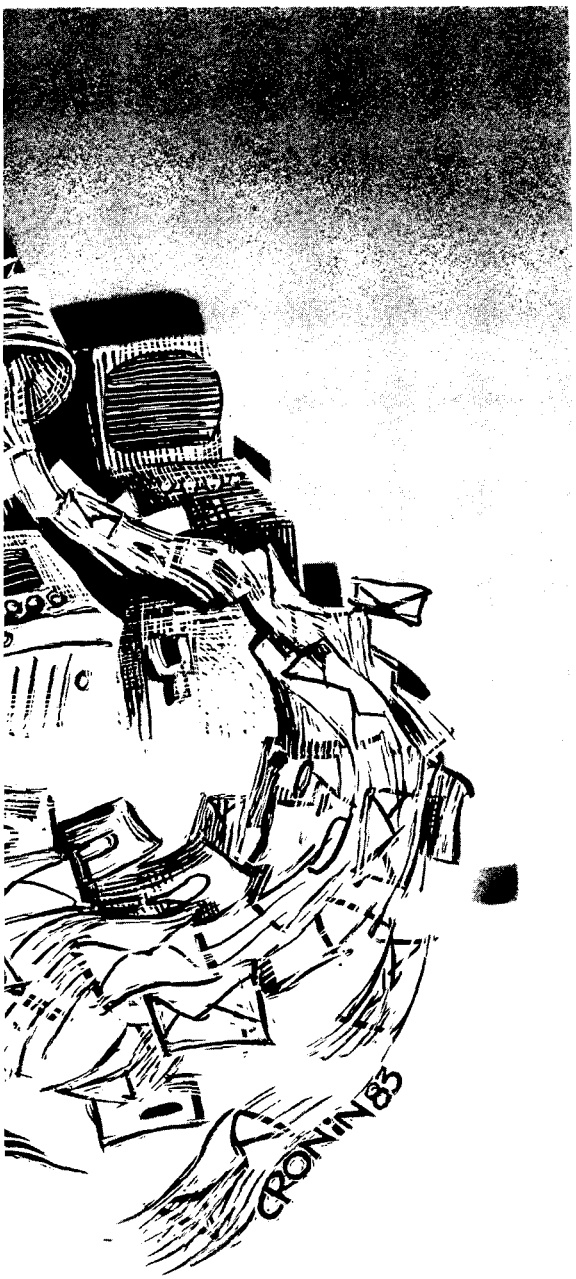

y Tina Rosenberg

Once upon a time, a candidate who chose to run for public office could look forward to a long string of chicken dinners and cocktail parties to raise the necessary funds. To pry money from the businessmen one met at such gatherings required wit, charm. . . and answers to some difficult questions. For many, the whole process tended to be a bit tiring. Yet on they went, realizing that the toil of face-to-face politics was the only way to raise the money needed to wage an electoral campaign.

Then, sometime in the late sixties, a few latter-day alchemists discovered a way to turn ordinary paper into political gold. It was called direct mail. Like the transmutation sought by magicians of the Dark Ages, direct mail promised instant, effortless money.

Today, everywhere you turn there's a new direct mail success story. Small contributions solicited by mail are often cited as an explanation for why the Republican party routed the Democrats in 1980. The Republican National Committee raised $28 million from contributions averaging $25 each; for the 1982 elections, they raised even more—$53 million. Jesse Helms's National Congressional Club raised $9.3 million for the 1982 elections. Terry Dolan's National Conservative Political Action Committee (NCPAC) raised $9.6 million. And direct mail is ecumenical: Independent Action, a liberal group founded by a former aide to Mo Udall, doled out $250,000 from direct mail solicitations to liberal candidates in 1982. Clearly, politicians have found a successful way to advance a cause or candidacy without exposing themselves to sweaty palms and halitosis. Haven't they?

Tina Rosenberg is a staff writer for the Roosevelt Center for American Policy Studies in Washington.

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Well, not quite. Take a closer look at the direct mail industry and you'll find that mail-order politics works just like a grown-up chain letter. The problem is that raising money doesn't necessarily mean making money. Take Jesse Helms's Congressional Club, the money-laden cadre that along with the Moral Majority, NCPAC, and the Heritage Foundation is presumed to be running the country. Every one of the candidates Helms backed in 1982 lost. Almost everyone trumpeted this debacle as evidence that the conservative cabal had been so successful in amassing money that it put off the voters. The pundits couldn't have been more wrong. Out of the Congressional Club's $9.3 million, only $150,000 went to House and Senate candidates in 1982. The other 98.4 percent of the money raised by this tireless crusader against waste, fraud, and abuse went to operating expenses for—you guessed it—the Congressional Club.

Keep in mind that the right has been refining direct mail since 1965. How have the direct mail neophytes on the left done? If Independent Action serves as a guide, not too well. Direct mail consumed so much of Independent Action's money that after giving out the $250,000 promised to candidates it ended up $328,061 in debt, most of which was owed to its direct mail consulting firm, Craver, Mathews, Smith. Independent Action will spend this year sending out solicitations written by Craver, Mathews—to pay back Craver, Mathews.

Flackmail

Some groups do manage to profit from direct mail campaigns. They fall into three categories. The first is presidential primary candidates. Thanks to the public financing law that went into effect in 1976, after a candidate in a presidential primary has raised $5,000 in each of 20 states through donations of less than $250, the government will match every small check. So a candidate can get by with half the return on direct mail that others need because public financing makes up the difference.

A second category consists of organizations that have been around for a while. Take the Republican National Committee's "overnight" success with direct mail in the 1980 elections. That took over ten years of carefully cultivating donors, a luxury the average congressional candidate can ill afford. Since its founding in 1970, Common Cause has built up its lists of donors with similar care and an eye on the long term. It can now boast that it spends only 16 cents for every dollar it earns from its 250,000 members. But to get those members in the first place Common Cause must spend $32.50 for every $27.50 average first donation. So, unless every candidate who chooses direct mail is also willing to wait at least five years to see a return on his investment, the application of these examples will be fairly limited.

The third category of direct mail winners consists of those who have tapped into an unusually hot issue. For years, the Union of Concerned Scientists did regular mailings on arms control, with no great success. In April 1982, however, as the nuclear freeze movement was getting underway, UCS tried again, and over the course of the next year netted $650,000. The sudden popularity of the cause never could have been predicted. As UCS's direct mail manager, Robert Bland, puts it, "When things started working, it wasn't because of our creative genius. The American people just became concerned about the issue." And the more emotional the issue and the farther out you go on the political spectrum, the better direct mail pays off. That's why you see language like, "Your tax dollars are being used to pay for grade school classes that teach our children that CANNIBALISM, WIFE-SWAPPING, and the MURDER of infants and the elderly are acceptable behavior." (Believe it or not, that's actual prose from a Jesse Helms NCPAC solicitation.)

Perhaps the earliest and best example of the right mailing at the right time was that of George McGovern in the 1972 presidential campaign. McGovern netted $18 to $19 million through direct mail contributions—the most money ever raised by mail by any presidential campaign committee. But McGovern's candidacy was hardly the norm—he was running against the Vietnam war, at a time when the popularity of that war had reached its nadir. McGovern tried to make political lightning strike a second time when, after he lost his reelection bid for the Senate in 1980, he founded Americans for Common Sense, a group defined largely by its opposition to the New Right. This time, however, direct mail failed to work the same magic. What had changed since '72? McGovern the presidential candidate who proposed to end an unwinnable war had become McGovern the champion of less tangible and fairly commonplace goals.

Something else had changed too. When the McGovern campaign got underway in 1971 a first-class stamp cost only six cents and paper was going for about a tenth of its present cost. In a venture like direct mail, where the initial return

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In 1982, Jesse Helms's Congressional Club raised $9.3 million through direct mail. After expenses, it had $150,000 to give to House and Senate candidates.

tends to be slim, cost increases as substantial as these have taken a heavy toll. Direct mail was also a novelty then; today so many solicitations are crammed into the nation's mailboxes that most letters never even get opened, much less answered. (See sidebar on page 36.)

Letter Imperfect

To understand why direct mail has caused grief to politicians in search of quick cash, let's look at how it works. Luckily for us, the National Federation of Republican Women has been kind enough to whip up a handy guide entitled "Eleven Steps to Raise $2 Million by Direct Mail." The first step: raise $200,000 to pay for the first mailing.

Welcome to the first big problem with direct mail: gargantuan start-up costs. As you may have guessed, most groups and candidates don't have $200,000 just lying around the office. Even if they do, a political organization that sinks that kind of cash into direct mail has to be making sacrifices in more traditional campaign techniques that are probably more reliable.

But let's say you have two hundred grand sitting idle in a bank account. Now tie all that capital up for a few months. Rent some compatible lists of names, maybe subscribers to friendly magazines (*The Washington Monthly*'s list will cost you $55 per thousand names) or donors to political allies. Do a few small mailings—say, 40,000 pieces—to test each list and your copy and graphics, since you don't want to waste money on a list that's gone sour or a pitch that won't sell. Then, when you're ready to take the plunge, mail a few hundred thousand letters. (As direct mail experts will warn you, keep a close eye on the post office. You don't want to repeat the experience of one congressional candidate who learned that his mailing was getting no response because the letters had ended up in the post office's incinerator.) Assuming the mail gets delivered, it will cost you 40 cents per letter if you need the speed of first class, and 30 cents if you're willing to slum it and go third class.

At the third-class rate and with an average donation of $20 (they are rarely higher), you'll need a response rate of 1.5 percent to break even. Sound easy? Ask Robert Strauss. When he was chairman of the Democratic National Committee, Strauss tried direct mail to raise money for the 1974 midterm party conference. He didn't even get back the cost of postage. This is fairly typical. If you can break even on a first mailing, you're doing extraordinarily well.

Any money left? Then rent more lists and do another mailing. "But, I've already got plenty of people I can send letters to," you protest. Ah, you're missing the point. Direct mail is like searching for gold in a riverbed; you don't just reach in, sift out the sand, take your gold, and head back to the city. You sift again and again, accumulating the gold speck by speck. In fact, direct mail practitioners refer to the process of mailing to fresh lists as "prospecting." If you're serious about making direct mail pay off, this is where all your direct mail money will go for the first few years.

Successive mailing to fresh lists allows you to add new donors to your "house" list—that is, the list of people who have given to your group. Mailings to people on the "house" list are where you actually make money in direct mail. Five to 15 percent of these people, all of whom have proven good for a contribution once, can be expected to contribute again to each mailing. If you haven't gone bankrupt before you manage to build up a reliable house list, pat yourself on the back. Few get this far.

But don't get too comfortable in that easy chair. Even house lists go stale. A good one will shrink by 25 percent every two years as people move, die, take up other interests, or decide

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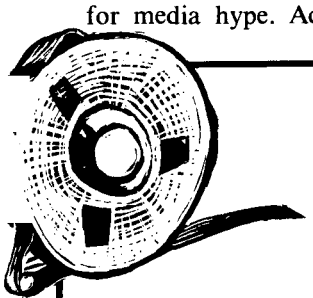
they're being played for suckers. To keep a house list reliable, you have to keep adding new names. It's like being the Red Queen in *Through the Looking Glass*; you have to run faster and faster just to stay in one place.

No wonder, then, so many people wish they'd never passed through that looking glass to begin with. Unsuccessful initial mailings have put a quick end to many a direct mail campaign. Take Agent Orange Victims International, Inc. This group stopped its direct mail campaign after two small mailings. ("No grotesque diseases," says Jim Aldige, a consultant who has been with Richard Viguerie's celebrated direct mail firm since 1969. "No leprosy. No pictures of starving children.") Then there's Representative Pete Stark, a liberal Democrat from California who figured his time as a statewide celebrity had come. California never got the message. Stark spent more than $25,000 on a statewide mailing and got back less than $15,000.

Why do political organizations make these kinds of mistakes? For many, it's a case of falling for media hype. Accounts in the press of this mysterious new political tool utilizing state-of-the-art high technology nearly always cite gross rather than net profits, overlooking the substantial investment behind even those direct mail campaigns that really are successful. In September 1981 *Time* gawked, "Already this year the Congressional Club has raised almost $3 million." And, to give equal time to *Newsweek*: "[Helms raised] nearly $10 million for distribution to right-minded candidates in 1981-82." Neither of these accounts asks the crucial question: At what cost? To probe too deeply beneath the surface of the direct mail "bonanza" would have endangered a great story about the technological transformation of the political landscape.

Even candidates who know in their hearts that the press has credited to direct mail magic qualities that just don't exist have figured they can benefit from its mystique; if candidates who use direct mail are thought to be sure winners, perhaps those media prophesies can be self-fulfilling. And, naturally, the arms race mentality of political campaigns means that if one candidate is using the



Please, please, Mister Postman

During the month of March, Howard H. Cammack of Delray Beach, Florida, received direct mail solicitations (128 in all) from the following groups and causes:

Democratic House and Senate campaigns (5)
Democratic National Committee (1)
Walter Mondale (7)
Sen. Teddy Kennedy (1)
Karen Silkwood Defense Fund (1)
North Carolina Campaign (2)
Association for Humanistic Psychology (1)
Mental Health Law Project (1)
National Cancer Foundation (1)
American Lung Association (1)
American Kidney Fund (3)
Hope (1)
National Council for the Aging (2)
American Parkinson's Disease Foundation (4)
National Women's Health Network (1)
Population Institute (3)
Planned Parenthood (1)
National Abortion Rights Action League (1)
Blinded Veterans Association (1)
Epilepsy Foundation (1)
Braille and Recorded Editions (1)
Eleanor Smeal Report (1)
World Rehabilitation (1)
Berea College (1)
Gallaudet College (2)
Meharry Medical College (3)
St. Labre Indian School (1)
Smithsonian Institution (1)
United Negro College Fund (4)
Anti-Nuclear Coalition (2)
Nuclear Weapons Freeze (1)
U.S. Committee Against Nuclear War (2)
International Physicians Against Nuclear Weapons (2)
SANE (1)
National Mobilization for Survival (2)
Peace PAC (1)
Southern Poverty Law Center (1)
Center for Defense Information (1)
American Friends Service Committee (1)
Environment Defense Fund (1)
Nature Conservancy (1)
New Forests Fund (1)
Environmental Task Force (1)
The Wilderness Society (3)
Sierra Club (1)
International Fund for Animal Welfare (1)
Friends of the Earth (1)
Meals for Millions (5)
Urban League (2)
American Civil Liberties Union (5)
Covenant House for Under 21 (2)
Nutrition Action (1)
Direct Relief International (1)
World Relief (1)
NOW Legal Defense and Education (1)
USO (1)
United States Golf Association (1)
Fortune Society (1)
Zero Population Growth (1)
International Church Relief Fund (1)
Foundation for Christian Living (1)
Guideposts (1)
Holy Land Christian Mission (1)
Maryknoll Sisters (1)
Recordings for the Blind (2)
NAACP (3)
World Federalists (3)
Clergy and Laity Concerned (2)
Council for a Livable World (2)
Women's International League for Peace and Freedom (1)
Physicians for Social Responsibility (1)
Union of Concerned Scientists (1)
American Cancer Society (2)
Amnesty International (1)
UNICEF (2)
League of Women Voters (1)
FARAL (1)
Handgun Control (1)

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mail, the other will do everything possible to match him. Some who understand that direct mail initially is a money-loser also stay in the game thinking that their missives at least amount to relatively cheap advertising—unaware that direct mail usually wins fewer votes per dollar than television advertising or phone banks.

So now we know how direct mail's naive victims fall into its clutches. Why do they stay? For two reasons. One has to do with direct mail consultants; the other has to do with politics.

Mailpractice

Direct mail consultants like to portray themselves as technicians who merely help good causes. What they don't like to acknowledge is that direct mail really *is* a gold mine—for them. The campaign contribution limits of 1974 meant the important people were no longer those who could give a lot but those who could raise a lot. The direct mail consultants on the left and the right are millionaires. And they didn't get that way by not mailing letters.

Take Craver, Mathews, Smith and Co., the largest liberal fund-raising firm. Like many firms, Craver, Mathews charges a monthly consulting fee that starts at $2,000, but it also gets a fee of $25 per thousand letters mailed. That fee per thousand provides the firm with a strong incentive to do large prospecting mailings that benefit Craver, Mathews but can also bankrupt the client.

If a widely respected expert tells you that an ambitious prospecting effort is just the thing for your congressional campaign, who are you to disagree? You might keep pouring money into direct mail until you're out of cash—and then pour in some more. Many direct mail firms, Craver, Mathews included, will continue to support a direct mail program for an obviously broke organization, eventually using these mailings not for the client's cause but to pay the bills the client owes them. The client has nothing to lose from this, and the consultant has everything to gain. The only one who loses is the contributor. Some fund-raisers—not Craver, Mathews, but other liberal firms such as the Kamber Group, the Anacapa Fund, and Richard Parker and Associates—will front the money for a group that can't afford to pay for even a test. In return, the fund-raiser acquires the right to rent the group's list.

The undisputed master of this technique is Richard Viguerie. But Viguerie often takes it one step further—he participates in the actual *creation* of a group. In his book, *The New Right: We're Ready to Lead*, Viguerie brags of his role in founding one of these groups: "In 1974, with the financial help of business leader Joseph Coors and at my own strong urging, Paul [Weyrich] founded the Committee for the Survival of a Free Congress. My company was more than willing to do the direct mail advertising."

You bet it was. After two years as a Viguerie client, the CSFC gave out only 11 percent of its gross to candidates. The other 89 percent went to overhead—a bit to offices and salaries, but the vast majority to the Viguerie company.

Of course, new organizations necessarily spend large percentages of their gross for prospecting. But in 1978, the CSFC percentage that went to candidates *dropped* to about 10 percent. That figure is supposed to go *up*, not down.

Viguerie's prominence in the direct mail field can be attributed to two things. First, Viguerie has the advantage of being the pioneer of political direct mail: he now boasts a house list of four million conservative donors. Such fertile ground is tempting for any new conservative group. Second, unlike other direct mail consultants, Viguerie does not subcontract out his chores. In addition to the Richard A. Viguerie Co., a direct mail consulting firm, he runs Diversified Mail Marketing, Inc.; Diversified Computing Services, Inc.; Diversified Research Services, Inc.; Diversified Specialties, Inc.; and American Mailing Lists, Inc. The key word here is "diversified."

Viguerie's lists and technical know-how have allowed him to become a spokesman for the New Right. This is the final stage in the ascendancy of mail-order politics; having assembled enough names and addresses, a direct mail consultant can eliminate the middleman—the politician—and climb onto the soapbox himself. Viguerie appears on talk shows, holds press conferences, publishes *Conservative Digest*, and frequently writes op-ed pieces. The technician of the New Right has become powerful enough to set the agenda for his clients. The sterility of this approach to politics should chill the heart of every liberal who wishes the Democrats could master the black art of direct mail as well as Viguerie has. Unfortunately, it doesn't seem to.

This brings us to the second reason political candidates allow themselves to become addicted to direct mail—it takes the shoe leather out of politics. To quote Tom McCoy, a fund-raiser for liberal candidates: "I've been talking to a former senator who is planning to run again, and all he talks about is how much he can raise through direct mail. He just loves the idea of not having to

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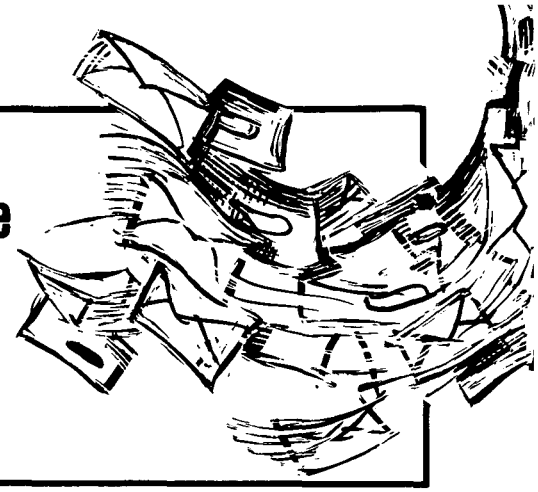
Direct mail can allow a candidate to hide behind his letterhead, avoiding tough questions like "Where do you stand?"



listen to grubby people ask him hard questions. He doesn't want to work." Other consultants and politicians may not put it quite so bluntly, but much of the appeal of direct mail lies in its worst characteristic: it isolates candidates from the electorate.

This isolation makes it very convenient for candidates to ignore the reasons donors contribute in the first place. Remember Jesse Helms's National Congressional Club, which spent more than $9 million on operating expenses and gave away only $150,000? When you look at this effort as a means of prospecting 300,000 names for Jesse Helms's 1984 Senate reelection campaign against North Carolina Governor Jim Hunt, it's not the failure it first appears to be. Assuming Helms started mailing to his house list right after the 1982 elections, we shouldn't be surprised to see him net $12.4 million for his reelection bid by October 1984. In effect, then, donors are being conned; while they think they are contributing to a campaign kitty for 1982 conservative candidates, in fact they are helping Helms find likely contributors for his own campaign two years down the road. Congressional Club Chairman Tom Ellis told me of a woman in a nursing home who sent a single dollar bill in response to a letter asking for money to defeat liberal candidates. "I believe in you, Jesse, keep on doing what you're doing," her note said. Would she feel the same way if she knew precisely what Helms *was* doing with her money? I asked Jim Aldige what responsibility the Viguerie company had to its donors. "None," he said. "That's for the organization, not the Viguerie company to worry about."

The right has no monopoly on this outlook. Teddy Kennedy's candidate PAC, the Fund for a Democratic Majority, gave out only 8 percent of the money it raised, using a large part of the rest to amass names for Kennedy's anticipated presidential bid.

Postbox soapbox

Repeatedly, savvy campaign managers and PAC directors on the right and left compare direct mail to a business. They know that for direct mail to be successful, it takes a few years of putting your returns right back in the mail. And if you continue to break even this technique is profitable for the consultants and the clients. Why think about the people who are giving the money?

In a broader sense, direct mail adds yet another barrier between the candidate and the public simply by making it less necessary to go out into the rough and tumble of the real world. Much political accountability has already been eroded by television commercials in which a candidate speaks with the assurance that he won't also have to listen. Similarly, in a direct mail letter a candidate hides behind his letterhead, not having to worry about tough questions like, "Can you win?" and "Where do you stand?" And direct mail has the additional benefit of allowing a candidate to tell different constituencies different things in the privacy of their own homes. Not surprisingly, as the electorate has become inundated with direct mail pleas, "targeting" (for example, sending your heartfelt sentiments on gun control only to NRA members who have rural zip codes) has become increasingly important.

No wonder so many politicians have been so eager to swallow the hype about direct mail, and have found out about its drawbacks the hard way. What they are learning from their correspondence course is that ethnic street fairs and fund-raising banquets are still an important part of politics. The politicians may be disappointed that they can't turn third-class postage into gold. But for those who think our politicians shouldn't be able to hide behind TV cameras and autopens, direct mail's failures are a victory, however small, for the rest of us. ■

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TIDBITS AND OUTRAGES

Next, Jack Abbott Endorses Norman Mailer's *Ancient Evenings*: "Heart-Stopping Adventure"

In an advertising blurb for In the Spirit of Crazy Horse, *a new book by Peter Matthiessen, Lawrence Pelletier writes, "I would like to encourage everyone to read this book, especially those who are concerned with human rights." The same ad points out that Pelletier was convicted of murdering two FBI agents in a brutal shoot-out.*

The NASA Consultant's Report Hasn't Been Translated into Latin Yet

Pope John Paul II recently announced that a Vatican commission appointed in 1979 to reexamine the Holy See's 17th century condemnation of Galileo for "vehement suspicion of heresy"—Galileo had been forced under threat of torture to recant his theory that the earth revolved around the sun—was "progressing very encouragingly."

All 45 Members of His Budget-Cutting Staff Called for Higher Expenditures in 1984

Representative Jack Kemp spent $347,079 on his 1982 reelection campaign. He ran unopposed.

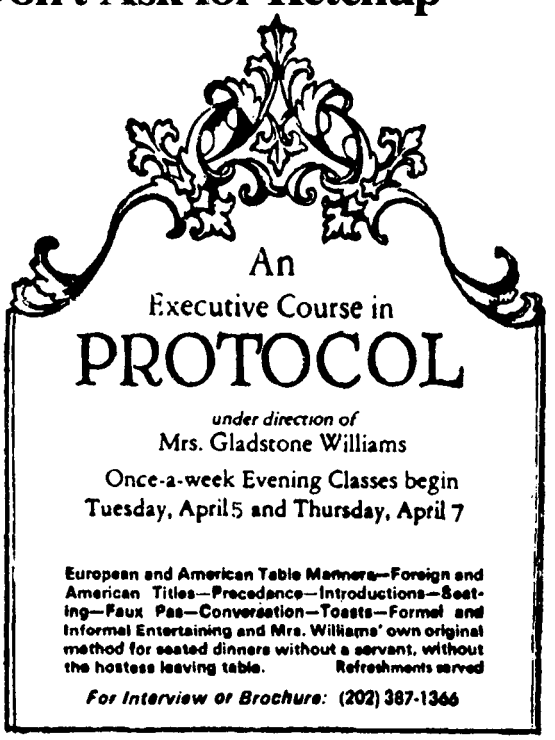
But If He's Indicted During Dinner, No Cassis Sorbet *for Dessert*

According to Lou Cannon of *The Washington Post*, Fred F. Fielding recently objected to inviting Teamsters President Jackie Presser to a White House state dinner on the grounds that Presser's former Ohio local is under federal investigation for racketeering. An unnamed Reagan adviser rejected Fielding's advice by pointing out, "Teamsters are always under investigation."

He Wants the Headstone to Be Just Right

Paul T. Bannai, director of the Veterans Administration cemeteries, has listed visits to cemeteries as the reason for five out of six government-financed trips in the last 16 months to Los Angeles, where his family and his insurance and realty business are located. When asked by a reporter why he visited a VA cemetery in Riverside five times, he answered, "This is where I plan to be buried."

Lesson Number One: Don't Ask for Ketchup



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LOSER PAYS NOTHING
WHY OUR COURTS ARE OVERCROWDE

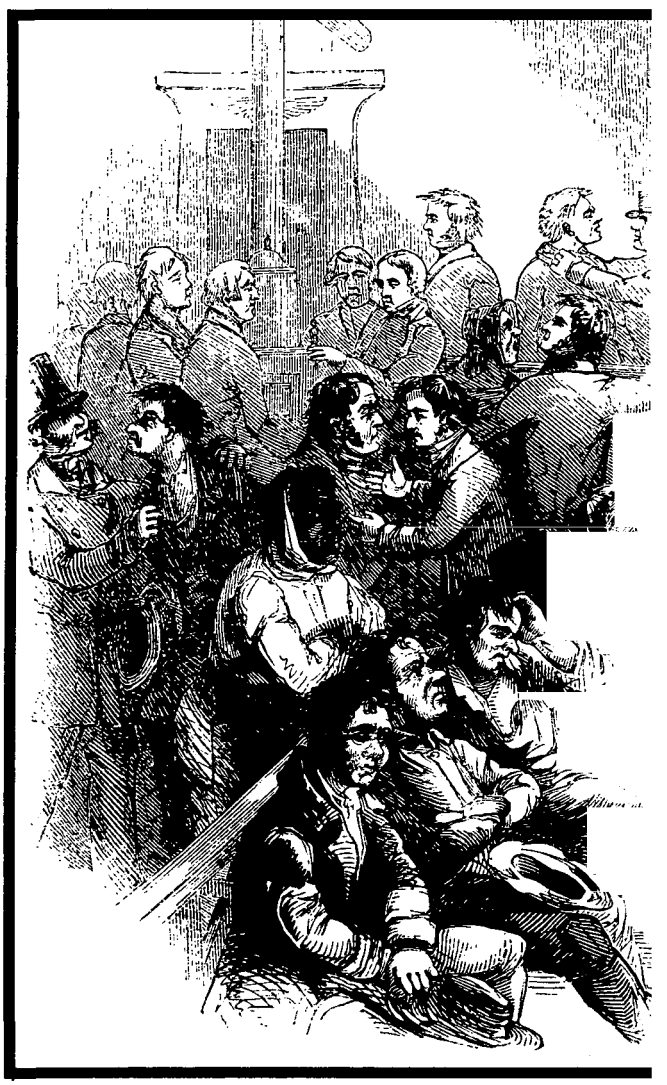
by Richard Neely

Since colonial times, Americans have been distrustful of their legal system, in part because the wealthy's ability to hire better lawyers, and in larger numbers, has given them a distinct advantage over the poor. To compensate for the effects of wealth on the administration of justice, a strong egalitarian tradition has developed to give every citizen free access to the courts. The wealthy may be able to hire the fastest legal guns—but they cannot hire a court.

However, as any economist will tell you, the demand for any good or service of value that is offered for free will always exceed supply. Courts are no exception. In New York, for example, it now takes more than four years to get a jury trial for a simple automobile accident. In Washington, D.C., collecting a bad debt through the small claims court may take six months.

Unfortunately, all litigants must stand in line for the same amount of time. A struggling entrepreneur may need to collect from his debtors within the month to stave off bankruptcy, while a multinational corporation in a contract dispute finds delay an advantage if it is the defendant. Likewise, no formal mechanism exists to distinguish a case involving an important public interest—where a highway should be built, whether a power plant should be constructed—from one of much less pressing concern. Everyone must wait his turn, and the egalitarian tradition absolutely forbids the sale of one's place in line to someone with a more pressing need for court services.

Long delays might be more tolerable if they were the unavoidable cost of carefully resolving difficult disputes. Yet the word "dispute" implies



Richard Neely is a justice of the West Virginia Court of Appeals and author of How Courts Govern America. *His new book,* Why Courts Don't Work, *from which this article is adapted, will be published by McGraw-Hill in September.*

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About 25 to 50 percent of all civil cases, excluding divorce and child custody cases, involve no real dispute. One party will be flat wrong and will know that from the beginning.

an argument in which each side believes that it is right. Of all the routine cases in court (and here, as throughout this article, I refer specifically to civil courts), the cases that come closest to this definition are contested divorce and child custody cases, in which both parties sincerely believe themselves in the right, and in my experience both parties do have some "right" on their side. But only about half of the civil cases are domestic relations cases. Of the remainder, I would estimate that 25 to 50 percent involve no real dispute. One party will be flat wrong and will know that from the beginning.

There are endless examples of non-disputes that go to court, but two should suffice for illustrative purposes. The first concerns an insurance company that makes the policyholder sue to recover property damages caused by fire or flood. After the disaster, the company typically says it requires "proof" of the fair market value of the house's contents. But how does one "prove" the fair market value (or even replacement value) of a two-year-old suit? Some people wear suits for only two years; I wear them for 15. Unless a company has reason to suspect fraud, there is no justification except selfish parsimony not to pay the face amount of the policy. Nevertheless, the company requires the filling out of elaborate forms; then its adjusters argue, delay, and attempt to intimidate the policyholder into agreeing to a lower settlement by raising the specter of his having to take them to court.

Another example of a frivolous dispute concerns landlord/tenant cases. Landlords are almost as well regarded by adults as is the Sheriff of Nottingham by children, and I speak from some personal experience, being the owner of two modern apartment complexes. In recent years it has become a widely recognized principle that the landlord has an obligation to keep his building in a "habitable" state of repair as a condition of the tenant's obligation to pay rent. Enough landlords live up to their abysmal reputations that this principle is quite reasonable.

My personal bias notwithstanding, in most disputes where tenants allege "uninhabitability" as a reason for not paying rent, the tenant is wrong. The majority of landlords, particularly those who provide housing outside the inner cities, are in a competitive market and have a strong interest in keeping their premises in a decent state of repair. If the tenant files a counter-claim of uninhabitability, it can take as long as a year for the case to reach a jury trial. The tenant is sometimes forced to pay his rent into the court pending final adjudication, but even then the landlord receives no rent during that period, while expenses for mortgages, taxes, and often utilities continue to mount. Rather than wait for the court to vindicate him, the prudent landlord will settle for a fraction of the rent owed him in exchange for the tenant's moving out.

Courting disaster

A sensible court system should litigate real disputes fairly while discouraging frivolous non-disputes brought by the guilty to escape liability for their actions. Our present court system falls far short of both ideals for the reason I've described: the courts are completely free.

In this respect the courts resemble a phenomenon known as "the tragedy of the common." In a traditional agricultural community where all have the right to graze livestock on the pasturage held in common, each farmer realizes that his self-interest lies in grazing as many cattle as he can on the common. Of course, if everyone acts similarly the common will quickly degenerate and everyone's livestock will suffer from malnutrition. Nonetheless, each farmer will continue grazing his livestock because any self-restraint on his part will only give his neighbors more free forage to divide among themselves.

Every time demand for a good or service exceeds supply, some kind of rationing system develops. In the case of the unregulated and thus

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overused common, farmers keep buying new cattle to replace their livestock that have died from malnutrition. The farmer who last runs out of money ultimately gets the common to himself. This is not a very intelligent system of rationing, but it is *a* system of rationing nonetheless.

In our free market economy, the price system is usually the mechanism that regulates the allocation of scarce goods and services. Rationing by price, however, presents an obvious equity problem: those with the most money, rather than the greatest need, get the most goods and services. Consequently, when necessities of life are in short supply, such as food during a war or medicine during an epidemic, widespread social outrage can result if the price system is allowed to do the rationing. In these instances, explicit regulation is often used: foodstuffs distributed in exchange for coupons, for example.

Where there is reluctance to let prices or government regulation ration a valuable good, the result is rationing by standing in line. Courts ration their services through the queue, and though many complain about the resulting delays, few question that it's a necessary price to pay for "giving everyone his day in court." Most overlook,

Breaking out of the courtroom

While something intractable in the American character may make us such a contentious lot, the national obsession with litigation has clearly reached ridiculous proportions. Court suits are increasing six times faster than the population, and each year state courts alone report more than 13 million new civil cases. Among those suits: a woman suing a man for breaking his promise to impregnate her and angry parents seeking to overturn the results of a high school football game because of an official's alleged error. (In the latter case, the parents won initially but the judgment was overturned by a higher court.)

Americans will probably never match the Japanese, who have only 15,000 lawyers (compared to our 600,000) and who resolve almost all disputes between businesses, landlords and tenants, and spouses through mediation. Still there are a number of reforms that would substantially curb our litigious ways, getting us out of the courtroom and back to creating wealth.

Make the Loser Pay. As Richard Neely describes above, our completely free access to the courts clogs the docket with frivolous disputes and causes lengthy delays that only help the guilty escape full liability. More important, the expense of litigation deters many with valid claims—the angry consumer whose $300 refrigerator is defective finds it more expensive to hire an attorney than to simply buy a new refrigerator.

One simple change would do more than anything else to encourage dispute settlement while bringing justice to the aggrieved: make the loser pay the other side's legal fees. Lawyers who believe their client has a good case will press ahead; those who don't will be willing to settle, or won't take the case at all. The courts should determine attorney fees on the basis of what's reasonable—i.e., according to rates charged by a typical practitioner, not the priciest Wall Street firm. Attempts at bill-padding by lawyers should be subject to severe punishment by the court, which should also have the discretion to grant relief to the impoverished litigant who has a good-faith dispute.

In some cases, the charges shouldn't stop with legal fees. Nearly a third of the time consumed by federal district courts is for contract disputes, in which private parties use a publicly funded forum to enforce a private contract. Needless to say, the taxpayer is the real loser. A user's fee to pay the expenses of operating the courts would be perfectly appropriate.

Make Settlement Offers Count. Good faith efforts by one party to settle a case usually count for nothing if the other side insists on a trial. England has a better system: a party who refuses a settlement offer must fare better in court or be liable for the other side's attorney fees. A similar approach is also working in California, where disputes under $15,000 are first referred to arbitration; if one side refuses to accept the judgment but does no better in trial, he bears the cost for both sides. An experiment in the federal district court for Eastern Michigan using this principle has increased the number of settlements and helped cut the average time between filing and case disposition from 50 to 30 months.

Increase the Use of Alternative Dispute Resolution. Arbitration and mediation aren't panaceas, and may be of no help if they're treated only as another step in the legal process. But these techniques can be used far more to encourage early settlement. For example, half of all state court cases involve divorce and child custody disputes, where emotions run high and courtroom confrontation often makes each party only more obdurate. Sending these cases to a mediator first makes sense. Mediation has other applications; in European countries, panels composed of landlords and tenants help mediate landlord tenant disputes, and in China, citizens mediate disputes arising from bicycle accidents. A few experiments in the United States have been successful; in Columbus, Ohio, for example, a neighborhood dispute center handles 20,000 cases a year, many involving assaults.

Contract disputes are another promising area for mediation. Some contracts now require binding arbitration in the event of disagreement. An alternative is the "mini trial," where executives of both companies (who make decisions about settlement offers anyway) question each other's expert witnesses and try to reach an agreement. One Washington-based firm, Endis-

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however, the injustices that result. Every time a person in the right is forced into court by a person in the wrong, the former sustains private expenses—in lost time, in anxiety, in legal costs. The person who is wrong also sustains private expenses, but usually the benefits of litigation per se far outweigh them. The most common benefit is the use of money while a meritorious case proceeds laboriously through the trial and appellate courts, which can take up to six years for resolution. Where procedural errors result in the reversal of a lower court judgment, forcing a retrial, a case can take more than ten years. Just the threat of such a wait is often enough to force the litigant who's right to settle for far less than he deserves.

The value of free courts to the wrongdoer is even greater where there is a small, yet certain, liability. The general rule is that a party who has been injured, unless the injury is intentional, is entitled only to his actual damages. What if the damage is $300? Few will hire a lawyer to go to court for $300. The average citizen simply cannot afford to litigate most small grievances. When he has a run-in with a store, a plumber, or an aluminum siding salesman, the amount in controversy seldom justifies the time and expense of a lawsuit.

six more escape routes

putes, Inc., provides neutral referees who offer opinions as to the merits of each side's case and help negotiate settlements as well. Under a loser-pays system, of course, such alternatives would be even more attractive to businesses.

Revive the Minor Courts. These forums, often known as "small claims" or "limited jurisdiction courts," originally were designed to resolve disputes without attorneys and absent the formal rules and legal machinery of the higher courts. Unfortunately, most states have allowed these courts to degenerate almost beyond recognition. Since only five states prohibit lawyers in these courts, any prudent citizen who takes on a department store or an automobile dealer is wise to hire his own attorney. A few states so distrust their minor courts that a losing party's appeal results in a completely new trial.

Lawyers should be eliminated from these courts and the judge should bear responsibility for asking the questions that search out the truth and ensure that the interests of both parties are protected. All too often, in the presence of lawyers American judges act like neutral referees or umpires who don't care about seeing that justice is done so much as whether the rules of the game are correctly observed.

Reform Probate. Ralph Nader has rightly called the current probate system "the screwing of the average corpse." Even the simplest estates in most states can't be probated without a lawyer, and in the 24 states that allow attorneys to charge a percentage of the total estate, it's not unusual for them to make $1,000 an hour for their toil. The system should be vastly simplified with a uniform probate code (now used in 13 states) that allows most wills to be executed without an attorney.

Institute No-Fault Auto Insurance. In most states, courts spend about 20 percent of their resources litigating injuries that arise from auto accidents. That might be tolerable if the system fully compensated the injured, but it does everything but that. The current tort system compensates the injured only if he can prove the fault of the other driver; as a result, nearly half the people seriously injured in car accidents receive absolutely nothing. When recovery does occur, those with the smallest injuries get three to four times their loss, largely because insurance companies find it cheaper to settle than go to court. Of every dollar motorists pay in insurance, only 44 cents goes to accident victims—the rest goes for overhead and attorney fees.

A reasonable no-fault system fully compensates victims for their medical expenses and economic losses (e.g., time lost from work), while letting only those with truly serious injuries—a broken back, paralysis—to sue for "pain and suffering" as well.

Yet in the 25 states that now have a so-called "no-fault" law, the lobbying efforts of trial attorneys have resulted in systems that are often worse than what they replaced. Eight states let a victim collect from his own policy for his losses—and then allow him an unrestricted right to sue anyway. And while 15 states have monetary "thresholds" designed to weed out the minor cases, the thresholds are usually so low as to be meaningless. New Jersey and Pennsylvania, for example, allow a suit whenever medical expenses exceed $200—a figure easily reached with a few X-rays and a visit to an emergency room. In states with higher thresholds, the ingenuity of attorneys—often working in concert with doctors—merely rises. In Florida, for example, a grand jury indicted a ring of doctors and lawyers for defrauding the no-fault system. Lawyers would hire "runners" to find accident victims, referring them to cooperative doctors who would put them in the hospital several days for "observation." When medical bills broke the $1,000 threshold, the lawyers brought suit.

Far and away the nation's best no-fault law is in Michigan, where suits can be brought only in cases of "serious impairment of a bodily function, permanent serious disfigurement," or death. The quadriplegic can sue, the motorist complaining of vague back pain cannot. Insurance premiums have risen more slowly in Michigan than nationwide, even though far more injured motorists receive compensation. Most important, the number of automobile injury cases in court has fallen substantially.

—Phil Keisling

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Losers weepers

A better court system would reallocate court costs to encourage small grievances that are legitimate while reducing those that are not. Yet in the same way that medieval society insisted the sun revolved around the earth, lawyers, businessmen, and politicians elevate the completely free court system to a matter of liturgy. Among respectable lawyers and jurists, anyone who advocates a scheme that would penalize those who bring frivolous litigation can expect to be received as warmly as the bastard son at the reading of the will.

I believe, however, that the oft-repeated proposition that everyone is entitled to his day in court is no more accurate than the proposition that everyone is entitled to a welfare check regardless of income. Those who have an honest, good-faith dispute that requires a decision by an impartial arbiter should have their day—but why should they have to suffer at the hands of those who abuse the legal process to escape from an adverse judgment? Those who clearly abuse the legal process should be punished—just as we punish those who cheat on their taxes or defraud welfare.

It is tempting to believe that the current system exists because it generates the most business for attorneys. But the legal profession, like American society in general, has its share of gadflies; if the proposal to penalize non-dispute litigation threatened only the interests of lawyers, many radical lawyers would have taken up the cause of eliminating frivolous litigation long ago. Rather, the existing system reflects a complex, and to a certain extent unconscious, structure of political accommodation. This accommodation, moreover, does not reflect the interests of business-oriented, upper-class judges bent on protecting insurance companies, landlords, manufacturers, and merchants from angry policyholders, tenants, and customers with real grievances.

Just the opposite is true. Most cases filed in small claims courts are brought by businesses *against* individuals. The vast majority of civil suits in West Virginia's magistrate court, for example, are either eviction proceedings against apartment renters, suits on credit accounts, or actions to recover for bad debts.

Getting a judgment against debtors in these cases is relatively easy; actually collecting the money is a costly and time-consuming process requiring the work of a knowledgeable attorney. If attorney fees could be recovered by the winning party, young and hungry lawyers would doubtless refine and computerize their techniques for tracking down their quarry, putting liens on a debtors' property, or attaching the tenant's wages. But in the name of curbing the worst predatory instincts of the legal profession, recovery of such fees is prohibited. The result is that few of these cases are worth pursuing.

In the classic poor vs. rich suit—a case brought against an insurance company, for example—plaintiffs' lawyers usually take such cases on a

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A sensible court system should litigate real disputes fairly while discouraging non-disputes by making losers in many frivolous cases pay the other side's legal fees.

contingency basis. The poor and middle class can thus bring a meritorious suit at no expense.

This explains why the tragedy of the common is tolerated and why those who criticize it are treated as heretics. A simple trade-off is involved: while the poor and the middle class cannot prosecute their minor grievances, they can fully prosecute their major ones. More to the point, for those concerned with larger questions of wealth distribution, seldom will the rich and powerful bother to prosecute a legitimate but minor grievance *against* the poor or even the middle class.

Of course, I do not suggest a blanket "loser-always-pays" approach for all cases, but there are certainly many for which it would work. When, for example, a business rents a store in a shopping mall and defaults on its rent, the landlord should be able to recover litigation costs if he is forced to bring the issue to trial. Both parties are sophisticated and have access to skilled lawyers, and often the guilty party in these matters—the store—is part of a national chain and is in a better financial position than the mall developer. The lawyers generally know whether their clients are right or wrong and in such cases should act accordingly to mitigate everyone's damages. Indeed, the loser-pays principle should be applied in all contract disputes between responsible businesses.

In landlord/tenant cases where a tenant fabricates some counter-claim, like "lack of habitable quarters," that proves demonstrably frivolous, then fees also should be assessed. Deciding the frivolity of a claim could easily be done by the courts or by juries, who have proven themselves quite adept at determining questions of good faith in such things as contract disputes.

Two major objections are usually raised to any system that attempts to reallocate litigation costs. First is the fear that tinkering with the rules will chill legitimate suits. While not a trifling concern, a system where most losing claims would have to be ruled frivolous before fees are assessed would largely eliminate this problem.

Another reason for the antipathy to reallocating litigation costs is that determining the "frivolity" of one side's claim would be difficult and would create one more appealable issue. The Federal Rules of Civil Procedure, for example, already have provisions for awarding costs whenever the discovery mechanisms are abused. In practice, trial court judges seldom award costs for abusing discovery because they don't want to take the time to determine whether a particular deposition was necessary, or whether 200 written questions were submitted for valid informational purposes or merely to harass the other party.

Supporters of the current system prefer to avoid the issue entirely, maintaining a position akin to the operative principle of the temperance movement: if you never take a drink you'll never be tempted to abuse liquor. Just as temperance advocates believe that drinking in moderation requires a judgment that few possess, they believe that a blanket refusal to assess court costs is preferable to a more discretionary approach.

It is not possible, or wise, to move like a bull in a china shop from a rule that takes no account of costs to a rule that always allocates costs against the losing party. But some effort to prevent the abuse of the common clearly is warranted. And while a new structure that fairly imposes additional costs on abusers of the system may occasionally catch innocents in its machinery, that is no reason to cling to a far inferior system. Innocents are currently being caught in great numbers in machinery supposedly designed to protect them and offer them redress. Penalizing court abusers and limiting competitive expenditures will mean fewer innocents caught in the machinery and forced to go to court at all. It's not a perfect system, but it's one that will be appreciably better than what we have now. ■

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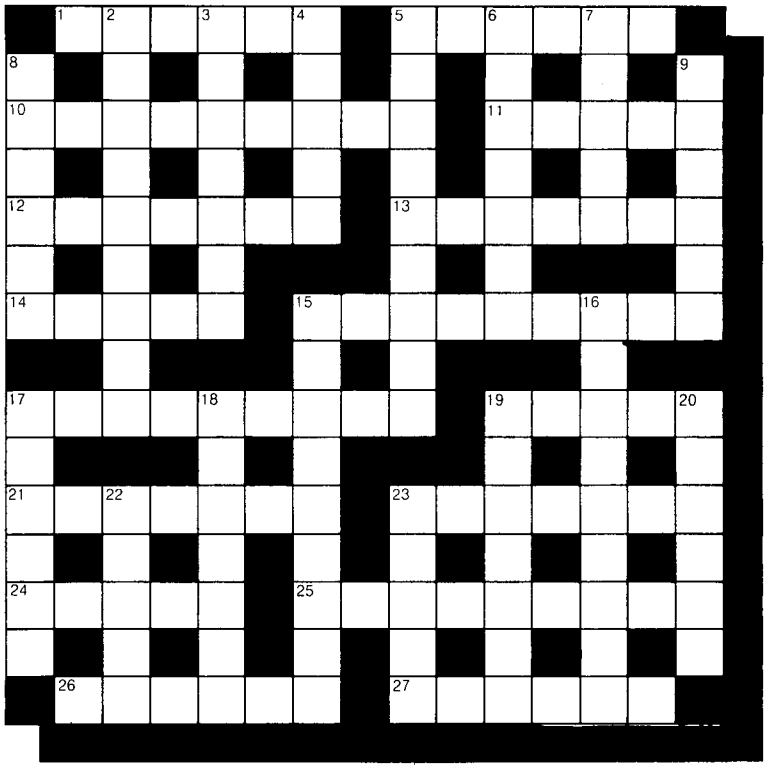
POLITICAL PUZZLE



by John Barclay

The numbers indicate the number of letters and words, e.g., (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word.

ACROSS

1. Leading man constituted an oral danger. (6,6)
5. See 1 Across.
10. Carry out a tool? (9)
11. Arabs constructed oil port. (5)
12. Thing to upset this evening. (7)
13. Power present? (7)
14. Three-point slaves. (5)
15. Package crazy reaction with end of session. (9)
17. Highlight of shoemakers' ball? (4,5)
19. Savagely roast a baseball player. (5)
21. Ran gear strangely to fix things up. (7)
23. European resort taken in by escort inappropriately dressed. (7)
24. Premature exaggeration? (5)
25. Paper sponsoring 96.5 yard race? (9)
26. Name that describes us in more detail? (6,6)
27. See 26 Across.

DOWN

2. Kennedy and Nixon in 1960, for example. (9)
3. Gets satisfaction for Geneva's organization. (7)
4. Stayed obscene coming up before tea. (5)
5. Character trait rarely displayed center ice. (9)
6. Bar tale recounted in Canada. (7)
7. One is the French passageway. (5)
8. Baseball in minor measure? (6,6)
9. Linkletter's boss displays learning? (6,2,4)
15. Worried about business editor? (9)
16. Get out of rut, invite something wholesome. (9)
17. See 8 Down.
18. Naked saint turned out most clammy. (7)
19. Father carrying one suitcase for Roman statesman. (7)
20. See 9 Down.
22. Sculptor of 1 Across embracing princess. (5)
23. Under a hundred birds' hoods. (5)

Answers to last month's puzzle:

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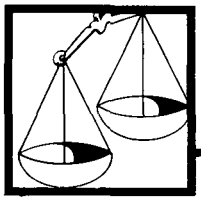
FREE THE LAW



by Thomas Hartman

In 1976 the state of Mississippi realized it had a problem. Its legal preceptorship program, under which would-be lawyers apprenticed themselves to practicing attorneys instead of attending law school, wasn't working. Of the few apprentices attempting the bar exam each year, fewer were passing. The clerks complained that lawyers who had agreed to sponsor them used them as cheap labor—and didn't prepare them to take the bar exam or to practice law.

So the Mississippi bar appointed a commission to study the situation. On the basis of the commission's findings, the legislature overhauled the program. The State Board of Bar Admissions increased the screening requirements for participants and precepts (its term for sponsoring attorneys), wrote more rigorous reporting guidelines, and generally gave the program more structure. The results were impressive. The success rate of clerks taking the bar exam—the one demonstrable gauge—almost doubled.

There was only one hitch. The legislation that restructured the program also abolished it. The only people benefiting from the reforms were the 20 clerks in the program as of 1979, who were protected by a grandfather clause. Legal apprenticeship in Mississippi had won the battle but lost the war.

Today, only four states—California, Washington, Vermont, and Virginia—allow reading for the law as the sole preparation for taking the bar exam. (New York, Maine, and Wyoming allow this method in combination with one or two years in law school.) In almost every case the outlawing was accomplished, as in Mississippi, with hardly a murmur of protest.

Thomas Hartman is associate editor of the Washington Journalism Review.

And good riddance, you might add, since America is awash in lawyers and their litigious ways. The demise of legal clerkship will strike most people as a small but welcome measure of relief. The nation needs fewer lawyers, not more, and it logically follows that the *last* thing we need is attorneys who don't have a law school diploma to hang on their office walls.

But wait a minute. Who else feels this way? Almost every one of the nation's 600,000 attorneys, from the ambulance-chaser in Oxnard, California, to the $500,000-a-year partner on Wall Street. Ask a typical lawyer about legal clerkship and he'll probably disparage it as a 19th century anachronism that produces third-rate attorneys who couldn't litigate their way out of traffic court. Some lawyers go a step further and take the opportunity to urge that entry into the profession be made even more difficult than it already is—all, of course, in the name of protecting the public interest.

If this gives you pause, it should. In fact, a closer look reveals that legal clerkship has been brought to the verge of extinction, not by anti-lawyer crusaders, but by lawyers themselves. And to understand how reviving legal clerkship actually offers the best hope for reducing the current surplus of attorneys and their exorbitant fees, it would be helpful first to recount the bar's systematic effort to destroy it.

Bar entry

The limiting of access to the legal profession is the story of three organizations working in concert. It took the ABA, the most important of the troika, only one year after its founding in 1878 to create the Section of Legal Education and Admission to the Bar. The section's professed mission

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SCHOOL 120,000!

was to promulgate standards for educating and testing applicants to the bar, and from the beginning the section's interests were in conflict—its first chairman was the chancellor of a law school. In 1900 the more prestigious law schools formed their own "separate" trade association, the Association of American Law Schools (AALS), which for 14 years held its annual conference with the ABA. This was the second of the group. The third, the National Conference of Bar Examiners, would swing into decisive action during the Depression; more about it later.

In their early years, both the ABA and AALS confined their attention to calling for higher quality in legal education. Then, in 1910, the Carnegie Foundation published the Flexner Report, a study that concluded that low standards for medical education were undermining the quality of medicine in America. The solution, the report concluded, was to raise the requirements for premedical and medical education and then to close schools that did not comply. Ten years later the number of medical schools—particularly those training immigrants, blacks, women, and the poor—had been reduced by half. Medical practitioners suddenly saw their prestige—and income—rise dramatically.

Lawyers and legal educators (even the ones who hadn't gone to law school) knew a clever move when they saw one. Soon the AALS was fiercely promoting higher standards. In 1919 the AALS took control of the ABA Section of Legal Education and established a committee to study legal education standards. The committee's chairman was no less an eminence than Elihu Root, a former secretary of war, secretary of state, and U.S. senator—and every inch a lawyer. In 1921 the Root committee made its recommendation: only graduates of three-year law programs having at least two years of college should be allowed to take the bar exam. This, obviously, meant no more clerks. With the country then in a serious recession and the legal business in the doldrums, the ABA approved the report and recommended that all states adopt the stricter standards.

Although lawyers championed these high standards as evidence of their commitment to protect the public from incompetent counselors, the desire to limit competition was the real motive. That's right—by 1921, the lawyer glut had already been a professional preoccupation for more than two decades. As Robert Stevens notes in *Law School*, his recent book on legal education, "By 1900, legal periodicals were filled with lamentations about overcrowding and the need for higher standards."

While the interests of the five law school deans who served on Root's committee clearly lay in promoting their academic domains, some subtler motives for erecting barriers to the profession were at work. The lawyers on the committee were almost all from New York, Philadelphia, or Chicago, where the better sorts of people were worrying about a surge of immigration. While few established lawyers practiced the storefront law that the lawyers among the immigrants provided, they nonetheless felt threatened by their presence. The members of the Root committee clearly had a strong allegiance to established practitioners, whose crass nativism often revealed itself in not-so-subtle ways. None other than Yale Law School Dean Thomas Swan proposed that sons and daughters of foreigners face stiffer legal education requirements than those for "native" Americans.

Having won over the ABA, lawyers, university presidents, and law school deans next rallied to convince state legislatures, who have final

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authority to regulate legal practice, to ban apprenticeship. But there the advocates of credentialism met stiff resistance, much of it from legislators who were former clerks themselves. By 1927, only one state had made law school a prerequisite for legal practice. Prosperity allowed most lawyers to look kindly on, or ignore, their less-credentialed brethren.

With the Great Depression, such generosity evaporated. Suddenly fearful of falling incomes, lawyers began to pressure state legislators to adopt the ABA/AALS standards. Again, the ostensible reason was protecting the public; the real one was to limit competition. Those aspiring attorneys who had alternate educational plans were out of luck. (One of them was a young man, then working for his cousin in California, who hoped to move temporarily to Nevada to take advantage of the loose requirements there. But when he heard the legislature would soon crack down on legal apprenticeship, Lyndon Johnson decided to return to Texas.)

For good measure, the legal profession erected another barrier to entry. The National Conference of Bar Examiners was founded in 1930, at the instigation of the ABA, for the purpose of making the bar exam more universal and more rigorous. As one federal judge put it, the virtue of a stricter bar was that it would "eliminate those who escaped elimination in the process of [law school] selection."

In the post-World War II era, the boom in graduate education, courtesy of the GI Bill and a robust economy, gave its share of business to the law schools and brought the number of law students up to 51,000. With this, the specter of a lawyer glut returned, and the guardians of the profession responded accordingly. In 1948, they introduced the Law School Admissions Test, and then, at the behest of the section of Legal Education and Admission to the Bar, the ABA raised its pre-legal requirement to three years of college. Finally, to stem the tide of baby-boom babies coming of age in the 1960s, the ABA and AALS raised the standards of approval for new law schools. This not only restrained the flow of students to a mere doubling, but, as Stevens observes, it left 94 percent of the expanded market for previously existing schools, who were not required to meet the higher standards.

In the meantime, what had happened to reading for the law? In 1982, 23 people in the entire United States were admitted to the bar after having apprenticed to attorneys—0.05 percent of the 41,313 who passed the bar.

Retooling schooling

If you agree that American life has come to place far too much emphasis on paper credentials and too little on actual experience, the case for reviving legal clerkship is an easy one to make. Arthur Strout, chairman of the Maine Board of Bar Examiners, perhaps says it best when he derides clerkship as "a possible escape hatch for those who have gotten themselves in a financial or personal bind." But this is precisely clerkship's most redeeming virtue: it opens the profession to those who cannot afford the time or money to go to law school, but who, taking the admittedly more difficult route, can demonstrate their competence by passing the bar. The only legitimate barrier to practicing law should be ability; and besides, who could we possibly prefer to enter this already overcrowded field than those men and women who are bright, dedicated, and self-motivated enough to succeed on their own initiative?

Unfortunately, simply making clerkship an alternative to law school has one serious flaw: it will produce more lawyers. The United States already has three times as many lawyers per capita as West Germany and 20 times more than Japan. Yet in defiance of all conventional economic law, this glut of lawyers hasn't limited legal fees, because lawyers have managed to create more business for each other. In just the last four years, civil lawsuits filed in state courts have increased 22 percent while the general population has grown only 7 percent; appeals to higher courts are growing at a rate of 11 percent *a year*.

This might suggest that the legal apprentice is one endangered species that deserves to be hounded into extinction. But what if legal clerkship were to *replace* most of law school? In this case, the result would be far more salutary: fewer and better lawyers who charge lower fees.

Before dismissing this as an outlandish claim, consider the following system for training the nation's future attorneys. Since all lawyers should have a basic knowledge of the law and the case method of study, each should still be required to take one year of academic study. During this year, the core curriculum would include torts, contracts, property, procedure, evidence, and constitutional law. Students would continue to be taught by the Socratic method, which is law school's most useful contribution because it offers what the rest of the American education system usually fails to teach—how to think. Students wanting to specialize could take elective courses, for instance, in criminal, antitrust, or tax law.

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If we were basing our revision on the current system, the next logical step would be for prospective attorneys to take the bar exam. But the bar exam, as it is now administered, doesn't accomplish its intended mission: verifying that law students are capable of performing competently on the job. By testing students in more than 20 areas of law, it forces frenzied cramming for a mile-wide, inch-deep test. Yet an increasing number of lawyers are specializing in only one or two areas of the law. Of the thousands of legal principles the bar tests, many will be forgotten within weeks or never used by the attorney in his practice.

The worst shortcoming of the bar exam—and of law school—is that it does not test performance. Its format largely requires the skills of a test-taker, not of a young lawyer. (The new bar exam in California is a heartening exception; beginning next month it will include a section testing one's ability to write and evaluate legal briefs.) In short, the bar exam is far too broad to measure the lawyer's abilities and capabilities and yet not narrow enough to test whether he has mastered his specialty.

Should the current system in which law school is followed by a bar exam be replaced with one that allows anyone to call himself an attorney? Only the wildest libertarians would advocate that. A better process would evaluate prospective lawyers' legal analysis and research skills as well as their knowledge of the specialties they plan to practice. It should also test how well the clerks perform on the job—designing and presenting arguments, drafting briefs, etc. The evaluation of new lawyers should be focused and practical, not superficial and academic. Tax lawyers should be thoroughly tested in tax law and not bothered with criminal law; a trial lawyer should be largely evaluated on his courtroom performance. So what if an outstanding trial attorney cannot correctly fill out an income tax form. Don't prohibit him from practicing altogether; simply confine his practice to the courtroom and don't let him visit upon the public his ineptitude as a tax lawyer.

The licensing of lawyers should be modeled on the current system for licensing engineers. Electrical engineers are thoroughly tested on whether they can design electrical generators; they are not also required to demonstrate that they know how to build bridges.

Not surprisingly, the legal establishment argues that the law is too complex and important to be taught by law-office study. If Abraham Lincoln, the patron saint of apprenticeship, were to try to practice today, he would make a very poor lawyer—or so the argument goes. But those who believe three years of law school are necessary should speak candidly with someone who's been through them. Those who have usually remember their first year as an intensive struggle to master the case study method and law's special vocabulary. The second year is far more relaxed, unless one is jockeying to win a position on the law review. The third year amounts to little more than biding time. And throughout, students are almost never evaluated by the standards they will be judged by once they begin practicing. The most graphic example of this is the fact that Harvard

Abraham Lincoln, the patron saint of legal apprenticeship.

Courtesy of the Library of Congress

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law students are graded solely on their examinations and not at all on their performance in classroom discussions. A recent proposal to change this has provoked vehement opposition from students—yet, as any lawyer who has argued before an appellate court will tell you, these Socratic exchanges better approximate actual practice than anything else in law school.

What's more, if law school deans and professors consider clerking so laughably inadequate, why has so much recent discussion on reforming legal education centered on the need for "practical education," which is exactly what clerking provides? In effect, a few law schools already are forcing students to clerk; Boston's Northeastern and Washington's Antioch law schools are just two institutions that require clerkships in addition to classroom study.

Perhaps the most fatuous argument against clerkship is that its success rate of 40 percent for those taking the bar exam compares unfavorably with the 65 to 70 percent success rate for law school graduates. Students should be protected from a method of education this unsuccessful, it is argued. The obvious paternalism of the argument aside—if people want to clerk despite these odds, why prevent them?—it assumes clerkship is inherently inferior as a method of preparing lawyers

Now don't you kids try this at home.

So you want to get a divorce. Or buy a house. Or probate a will, change your name, form a corporation, adopt a child. It's not that complicated, really: all that's involved in most states is preparing and filing standard legal forms. But if you're like most people, you'll decide to hire a lawyer. You won't do it because you want to; chances are you'll do it because you really don't have any choice.

The reason: in the name of shielding the public from charlatanry, every state prohibits the unauthorized practice of law. To enforce the law, many states let the bar police its own profession. The American Bar Association's Code of Professional Responsibility reminds lawyers that the prohibition is "grounded in the public need" for "integrity and competence of those who undertake to render legal services."

High-minded ideals. But they mask a far simpler and less-admirable purpose: to protect a legal monopoly.

A lot of legal work could just as easily be performed by others, and, in fact, already is routinely delegated to clerks and paralegals under the "supervision" of attorneys who rarely do more than sign the completed form.

A classic example is the title search. All that's involved here is a trip to the courthouse and a few minutes prowling through dusty records of property transactions, tracing the chain of property ownership back to a title whose validity is indisputable. Just in case, it's necessary to make a quick search of wills and court judgments to ensure no long-lost relative or anyone else will turn up with a claim on the property. Even in localities with the most antiquated record-keeping, it seldom takes longer than a half-hour. In Philip Stern's book, *Lawyers on Trial*, Matthew Valencic, a non-lawyer college student, recalls that it took him all of two weeks to be initiated into the mysteries of title searching by the outgoing "expert"—a college dropout quitting to go on the road with a rock band. "At Valencic's pay rate ($3.25 an hour), the cost to the attorney of each title search—even throwing in ten minutes for typing up the results—amounted to something under $1," Stern noted. "All that remained was for the attorney to sign the title certificate—and bill the client." With title searches commonly billed at a percentage of purchase price, the rate for a $100,000 house today can reach $750. Valencic, who now heads Help Abolish Legal Tyranny, a legal reform organization in Washington, D.C., told Stern: "I could have started my own business—except that I'd have been sued for the unauthorized practice of law."

There's no prohibition against doing legal work yourself, but rest assured that the legal profession has made it as difficult as possible. Take, for example, filing for an uncontested divorce in Connecticut. The complaint must be filed in accord with Form 396 of the *Connecticut Practice Book*, which means that "comes now the plaintiff" and "prays the judgment of the court" had better be in the right place. What's more, the complaint must be issued on a ruled sheet of legal-sized paper containing two punched holes four-sixteenths of an inch in diameter, two and twelve-sixteenths inches apart, seven-sixteenths of an inch from the upper edge of the page, and two and fourteen-sixteenths inches from the side.

Once you've got the holes right, you need to complete the form. While most of the information required is basic—the address of the parties and the maiden name of the wife, for example—some of it is dauntingly complicated to the average layman, particularly one going through the mentally trying ordeal of divorce. What, for example, should you cite as the grounds for dissolution? Eleven reasons are allowed but the form provides no checklist. What about the claims for relief? If you forget to list child support, alimony, or division of property, you could be in trouble.

If you're not willing to compromise and consult a lawyer, help isn't that easy to find. There's no walk-in clinic offering to lend inexpensive assistance, no friendly hotline listed in the phone directory. Self-help books and do-it-yourself kits can be useful, but they aren't available in many places and can't answer personal, specific questions. Neither can a paralegal or a secretary, no matter how skilled. A nearby law library? Many are open only to attorneys and law

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for the bar. Yet several years ago, the highest score on the Vermont bar exam belonged to a student who had prepared by law-office study.

Training lawyers largely through clerkship will certainly not please the nation's law schools, but it will be far better for the public than the current system. Start with the purely economic reason: clerking won't cost the public a penny. Last year, for example, California spent $30 million to subsidize its law schools, a figure that would be cut dramatically if only one year of school were required.

Substituting clerkship for two years of school would also result in fewer lawyers. Consider the motivations of those who now enter law school. Some admittedly have a burning desire to practice the law. But a far greater number have only vague ideas of their preferred career; law school provides a safe and familiar environment, more like college than the real world, while they ponder their choices. Though most of these people do not hate law school, they don't particularly enjoy it either. But once they've gone beyond their first year, few fail to go the distance, telling themselves they've invested so much time and money that they'd be foolish to quit.

As a result, each year thousands of law school graduates begin their practices harboring vague

students, and if they aren't, the librarian has often been warned to steer immediately to an attorney anyone seeking legal advice. Courthouse clerks will be glad to hand you the forms, but, with lips pursed, they'll shake their heads and offer a lawyer referral when asked how to fill the forms out.

With few exceptions, the courts have ruled it illegal for anyone save an attorney to give legal advice—even if it's only to answer a question about a standard form. Some within the profession find that ridiculous. Not surprisingly, most attorneys vehemently insist that unauthorized-practice laws are for the public's own good. "When you hire a lawyer, you're getting a person with moral character and legal knowledge—and someone who can be disciplined by the bar," says Leon Scroggins, who heads the Illinois bar's Unauthorized Practice of Law Committee. Washington, D.C.'s bar committee chairman, Michael Curtin, says, "If a lawyer makes a mistake, the bar can discipline him, and there's a fund to compensate his clients. If a non-lawyer screws up, what are you going to do?"

Probably the same thing you'd do if a lawyer screwed up—nothing. A 1979 ABA survey of five major states showed that more than 90 percent of client complaints are dismissed without investigation, only 2 percent result in public discipline, while less than .5 percent lead to disbarment. And the client security funds that the attorneys portray as incompetence insurance? In D.C. and most other places, funds are available only in cases of fraud, and reimbursements are offered "as a matter of grace and not of right." To get any money back, you'd probably have to hire another attorney. There's also little evidence that laymen would make many more mistakes than lawyers. In a 1981 *Stanford Law Review* study, the most comprehensive look at unauthorized practice to date, Deborah Rhode found "no indication of widespread public injury attributable to lay practice."

So how do lawyers maintain their stranglehold? Partly through intransigence: a Federal Trade Commission investigation of "non-traditional forms of legal services" has been stalled for years, mostly because two-thirds of the state bar associations refuse to respond to questionnaires.

Another way is through assistance from allies in the system. Last year a bill designed to reduce probate costs was introduced in the Maryland legislature. (The potential for reducing their costs is substantial: in England, for example, where laymen do the work, it costs 100 times less to probate an average estate than it does here.) The Maryland measure, which proposed only minor reforms, was shot down by the judiciary committee, which is composed mostly of lawyers. And while laymen can now search titles in every state, few do so, for good reason: banks often require that an attorney certify a title before loaning the customer money to buy the property.

Sometimes, though, the lawyers go too far for their own good. In Washington state, a group of attorneys recently challenged a new law allowing escrow agents (the middlemen who hold property for a buyer and seller until all obligations of a deal have been met) to complete the process by preparing documents for real estate closings. The lawyers won the first battle: the Supreme Court declared that the agents' services constituted an unauthorized practice of law. But the decision prompted such heated public protest that even the state bar urged the court to rethink its opinion. It did; today a Fair Practice Rule Board is preparing to test, license, and regulate escrow agents and others who wish to prepare real estate forms.

There is little doubt that, particularly in major cases, you're going to be better off with an attorney than without one. But it's equally clear that a person should be permitted to weigh the high cost of counsel against the risk of going to someone who lacks a diploma but promises to do the job just as well and for much less money. Alan Morrison, director of the Public Citizen Litigation Group, puts it aptly: "The bar wants everyone to drive a Rolls Royce and that's nice if you can afford it. But if you can get there in a Studebaker, why should you have to drive a Rolls?"

—Douglas Jehl

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feelings of dissatisfaction about their chosen profession. These feelings often grow into resentment as their initial years as associates for a large firm are filled with 100-hour weeks. Some grow bitter, unable to find consolation in even the high pay or prestige that the profession offers. But rather than quit, they try to find satisfaction in what they do outside of work, be it sailing, philanthropy, or other activities.

James Stewart, author of *The Partners: Inside America's Most Powerful Law Firms*, describes how he and three friends felt about their time at Harvard Law School. None of them, Stewart says, really knew why they were there. "The first year was incredibly exciting; we felt something really important was happening," he says. But the feeling soon dissipated, and by the third year a typical day consisted largely of "rolling out of bed and going down to the [job] placement office."

All four friends took jobs in corporate firms upon graduation, though they made an informal pact that they would leave those jobs after two years. Stewart was the only one who left. "When I left Cravath [Swaine and Moore]," he recalls, "a parade of associates came into my office, closed the door, and poured out their hearts about how miserable they were. It was amazing. Here were all these bright, energetic people who seemed so helpless, as if they couldn't survive if they left to do something else." He adds, "An overwhelming majority of my class graduated without having any idea what a lawyer does on a day-to-day basis. If they had, fewer would have graduated, and even fewer would have gone to law school to begin with." And, needless to say, even fewer would now be trying to drum up legal business.

Clerkship offers that first-hand look at the law, and those who decide they don't like it can quit and chalk up the time spent to youthful inexperience. After all, it's much easier to walk away when you're a 24-year-old clerk making $15,000 a year than when you're a 27-year-old associate, making $35,000 a year and owing $40,000 in loans for three years of law school.

The final advantage to this new method of training lawyers is that it would demystify the profession. Serving a clerkship sounds downright grubby next to the thought of spending three years becoming a "scholar of the law," and that's exactly the point. Practicing law is important to our society, but so is running a business, building houses, repairing complicated machinery, or patrolling a neighborhood. Yet because lawyers have been trained so long in a classroom rather than on the job, they tend to consider themselves part of a professional aristocracy, somehow different from construction foremen, mechanics, or policemen, even though most of their work is routine and easily mastered by a person of reasonable intelligence and perseverance.

This feeling of enhanced status also contributes to the rationalizations lawyers use to justify their generous salaries. It's useful to compare compensation rates in England, where solicitors can take a minimum of one year of specialized legal training and clerk for five years in lieu of graduating from law school and clerking for three years. Though the training period is even longer than it is in America, starting salary for those who've just passed the bar exam seldom exceeds $15,000 at the best London firms. On Wall Street, a starting salary of $50,000 is not uncommon.

Clerkship would put lawyers more on a par with the rest of us, which would have another salutary effect. Even people who disdain attorneys are somewhat in awe of them, usually deferring to their judgment when they're advised to press a case that may be unwinnable, or grumbling silently when their legal bill arrives. Seldom do people demand the kind of accounting from an attorney that they do from, say, their local automobile mechanic.

Diplomania

What has happened to the legal profession, and what lies behind the decline of clerkship, is that the requirements for paper credentials now far exceed any legitimate need to protect the public. Instead, the current system serves a far different function: ensuring comfortable, if not lavish salaries, for existing attorneys while protecting them from competition and serious performance evaluation. This phenomenon is hardly unique to the law, of course; many licensed doctors are dangerously incompetent and the students now leaving our public schools as functional illiterates have all been taught by credentialed teachers.

The answer to poor lawyers, not to mention bad teachers and incompetent doctors, is not more credentials, as many within these professions assert. Rather, the profession should be open to all who are willing to be evaluated by how well they can perform their jobs. After all, those who succeed in law, as in any occupation, should have to do so on the basis of their ability, not their diplomas—which is why clerkship ultimately deserves to be a model for far more professions than just the law. ■

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POLITICAL BOOKNOTES

After Brezhnev. Robert F. Byrnes, ed. *Indiana University, $25/$12.*

The American Opportunity. Edwin Hartrich. *Macmillan, $17.95.* Hartrich, an international business consultant and former *Wall Street Journal* reporter, has written an accessible, educational survey of development policy in scores of postwar economies. His prescription for U.S. policy is a generally conservative one: America should promote economic expansion only in those Third World countries committed to free enterprise, basic agricultural development, and small, "mutually beneficial" industrial projects.

—Richard Meyer

A Conspiracy So Immense: The World of Joe McCarthy. David M. Oshinsky. *Free Press, $19.95.*

Dangerous Currents. Lester Thurow. *Random House, $16.95.* Thurow offers no sweeping theories about the cause of America's economic decline, no detailed policy agenda for the future. What he does offer—a description of the myths and false assumptions that underlie much of conventional economics—makes this a satisfying and invaluable book.

Thurow demonstrates how a major building block of economic theory—the "equilibrium price-action model" by which markets for products and labor supposedly adjust themselves by price—is fundamentally flawed. Businesses often compete with quality and service; a worker can't sell his services for $6 an hour if a prospective employer already is paying $12 to his other employees. Yet rather than abandon the model, Thurow describes how many economists construct convoluted explanations in a vain effort to compensate for economic reality.

Thurow doesn't present an alternative but his analysis is convincing. Two sections of the book stand out. The first is his demonstration of how supply-side economics, rather than being the "voodoo economics" that liberals deride it as, shares the same logical fallacies as Keynesian economics. The second is a brilliant chapter describing how cost-of-living adjustments in wages and government benefits have thwarted the best efforts of policy-makers to minister to our ailing economy.

—Phil Keisling

Folded, Spindled, and Mutilated: Economic Analysis and U.S. v. IBM. F. Fisher, J. McGowan, J. Greenwood. *MIT Press, $25.*

Framed: The New Right Attack on Chief Justice Rose Bird and the Courts. Betty Medsger. *Pilgrim Press, $17.95.*

Free to Teach: Achieving Equity and Excellence in Schools. Joe Nathan. *Pilgrim Press, $14.95.* This thoughtful, front-line look at American education details many of the same problems that several national commissions on the public schools have recently addressed. As a former teacher and school administrator, Nathan offers convincing criticisms of the debilitating effects of the seniority system, the lack of performance pay and meaningful evaluation for teachers, and the over-emphasis on credentialism that pervades the educational system. His proposal for government-financed vouchers that would allow students to attend the school of their choice (public and private) is intriguing, but far more worthwhile are his personal accounts of how conscientious teachers and administrators can dramatically improve the quality of education.

—P.K.

Gambling with History: Reagan in the White House. Laurence I. Barrett. *Doubleday, $19.95.* Barrett, *Time*'s White House correspondent, is certainly close to the president—remember the glossy, four-color advertisement in the magazine showing him and Reagan chumming it up in the Oval Office? And though his isn't an "authorized history," Barrett was given special access to the corridors of power—an evening with the president watching the 1982 election returns, a breakfast meeting with him and top aides.

Many of the insider stories he relates are new and fascinating—particularly those about Al Haig. Barrett goes beyond the now-hackneyed "I'm in control here" story to show Haig, Fred Fielding, and others huddled around a conference table after the assassination attempt, poring over a copy of the 25th Amendment to see if the president should be relieved of his duties. And he provides some interesting details about the events leading up to Haig's forced resignation, which culminated in Haig's telling Reagan, "I think [firing me] is dangerous and wrong".

But you have to wonder where Barrett the insider and Barrett the journalist clash. Is Jim Baker treated more kindly than Ed Meese because he does a better job, or because Barrett and Baker frequently play tennis on the White House courts on Sunday afternoons and go off on Texas fishing trips in the summer? Would Barrett still see Reagan as a courageous idealist, "gambling with history" by choosing visionary policies over pragmatic ones, had he not spent weekends with the president at Camp David?

While Barrett's is the most thorough chronicle so far of the Reagan years, it unfortunately lacks the detached perspective that makes for the best history and the best journalism.

—Douglas Jehl

Henry Cabot Lodge and the Search for an American Foreign Policy. William C. Widenor. *University of California Press, $24.50/$8.95.* Though occasionally dry and professorial, this is a healthy corrective to the popular misconception of Lodge as a calculating despoiler and a callow, scheming cynic who had only a personal vendetta against Woodrow Wilson and his League of Nations.

Widenor offers a fascinating account of how the Lodge of the

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1880s and 1890s—American imperialist, tireless proponent of American naval supremacy, and cultivated, urbane cosmopolitan—would emerge in 1919 as the champion of a ragtag coalition of xenophobic middle-Westerners, America Firsters, and other backwood isolationists.

Lodge is portrayed as every bit a visionary of America's role on the world scene as Wilson was (though in an admittedly less noble way), and Widenor's portrait does much to justify Lodge's sharp impatience with his opponent's hazy romanticism.

—*Hope Leman*

How to Strike It Rich in the Coming Boom. I. Robert Parkel. *Rawson Associates, $13.95.*

Human Debris: The Injured Worker in America. Lawrence White. *Seaview, $14.95.*

The Insanity Plea. William Winslade, Judy Ross. *Scribner's, $15.95.* Ross and Winslade use seven cases in which defendants were judged not guilty by reason of insanity (including that of John Hinckley) to point out the deficiencies of the insanity plea. Among their conclusions: the deterministic nature of psychiatry is "philosophically incompatible" with the belief in free will underlying our legal system, and "expert" psychiatric witnesses frequently bludgeon juries into acquitals with confusing and conflicting subjective testimony. The authors believe a psychiatrist's role in a trial should be limited to recommending treatment for a defendant rather than deciding the question of actual responsibility—a sensible and long-overdue reform.

—*James Gibney*

Inside the Trojan Horse: The Odyssey of David Stockman. Anne Urban. *Presidential Accountability Group, $10.50.* This book is three things. First, it is a collection of sometimes superfluous and derogatory biographical details (for example, as high school quarterback, Stockman carried the team to "probably the worst [season] in the history of Lakeshore") that the author, it seems, believes foreshadowed the Stockman debacle. Second, it is a forum for the railings of betrayed supply-siders against their Judas at the OMB. Third, it is a compilation of press coverage of the 1983 budget appropriations process before and after the William Greider piece in the December 1981 *Atlantic*—and, as such, a criticism of the Reagan administration as a whole.

What this book is *not* is what Greider's piece was: a candid and revealing look at the misgivings and apprehensions of the nation's budget director. This may be because Urban never interviewed Stockman herself. (She did speak to his mother, who is quoted almost as extensively as supply-sider Jude Wanniski.) As a result, one feels that the book would be more appropriately titled, "*Outside* the Trojan Horse" and that a second perusal of Greider's *Atlantic* article would be more worthwhile.

—*Teresa Riordan*

Inventing Motherhood: The Consequences of an Ideal. Ann Dally. *Schocken, $19.95.*

Kings of the Hill: Power and Personality in the House of Representatives. Richard B. Cheney, Lynne V. Cheney. *Continuum, $14.95.*

Lead Time: A Journalist's Education. Garry Wills. *Doubleday, $18.95.*

Living with Nuclear Weapons: The Harvard Nuclear Study Group. *Harvard University, $12.95/$3.95.*

Miranda: Crime, Law, and Politics. Liva Baker. *Atheneum, $16.95.*

The Nuclear Hostages. Bernard J. O'Keefe. *Houghton Mifflin, $14.95.*

The Politics of Recovery: Roosevelt's New Deal. Albert U. Romasco. *Oxford University Press, $19.95.* In portraying the New Deal as a hodgepodge of often contradictory policies and programs, Romasco, like historians before him, effectively shatters the myth that FDR was the visionary architect of our modern welfare state. Roosevelt, he argues, was a political animal, and his New Deal, an ideologically inconsistent hybrid, pieced together less according to a master plan than by the demands of the hour. He's right, but he overlooks the rest of Roosevelt—the charismatic leader, the true Democrat whose compassion for the plight of the nation spurred his search for a means toward recovery.

—*D.J.*

The Reagans: A Political Portrait. Peter Hannaford. *Putnam, $19.95.* One wonders why Hannaford bothered to write this book. A longtime associate of Reagan and an occasional speechwriter, Hannaford could have offered a number of new (though no doubt complimentary) insights into Reagan and his circle by dint of his insider's status. Instead, we are treated to 300 pages that retell familiar stories. At times, Hannaford seems to lapse into revisionism; for example, he insists that Reagan's famous "There you go again" line used in the October 1980 debate with Carter was purely spontaneous, even though we know from other sources that the line was tried and perfected in Reagan's mock debates with David Stockman.

—*Robin Gradison*

That Damned Lawyer. Henry B. Rothblatt. *Dodd, Mead, $14.95.*

The Threat: Inside the Soviet Military Machine. Andrew Cockburn. *Random House, $16.95.* The thesis of this witty, informative book is that the Soviet military is ridden with a corrupt and negligent officers corps, weapons that don't work, and conscripts who lack the morale, energy, sobriety, internal loyalty, or training to wage a fast-paced offensive against Western Europe (or, probably, any other territory). Cockburn, a defense journalist and documentary film maker, relies on interviews with middle-level U.S. intelligence analysts, Israeli officers who have fought against Soviet weapons in battle, and—most important—several dozen emigres who have served in the U.S.S.R.'s armed forces. From the latter come the book's most dramatic and humorous moments and its highly authentic flavor.

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The Threat does much more than debunk myths of Soviet invincibility. It also portrays, with unusual detail, the inner workings of an entrenched, encrusted military bureaucracy that churns out equipment and organizes its manpower with only slight sensitivity toward what is really needed to fight and win wars—or toward what the other side (i.e., the U.S.) is doing. Cockburn's ultimate point is that the military machines of *both* superpowers are geared primarily toward the needs of their own self-aggrandizing goals, and that they use the specter of "the threat" mainly to legitimize themselves. In this sense, the military bureaucrats of the U.S. and the U.S.S.R. are their own best allies, prodding each other's good fortunes and gargantuan budgets.

—*Fred Kaplan*

Toughing It Out at Harvard: The Making of a Woman MBA. Fran Worden Henry. *Putnam, $14.95.* Somehow, even after Henry suffers the pains and outrages of Harvard Business School—feels alienated from family, friends, and self; endures the "break-you-into-little-pieces" approach of HBS professors; and watches classmates develop nervous twitches due to assignment pressures—Harvard still comes out on top. That's what is puzzling about the book—after compromising her ideals and putting up with some pretty dehumanizing treatment, Henry surprisingly concludes it is still worth it.

The book, written in near-diary form, likens the B. School to a military boot camp, where survival is the main lesson. Henry gives a good description of the panic that sets in when one is waiting to be called on in class and she intelligently communicates, without sounding trite, the frustrations she feels as a member of the 24 percent minority of women at the school.

This is a lively, interesting book, but it reinforces one's sense that Harvard Business School isn't the best place to train the managers of tomorrow.

—*Leslie Winick*

The Tragedy of Lebanon. Jonathan Randal. *Viking, $16.75.* This is an angry and deeply pessimistic book. Randal, senior *Washington Post* foreign correspondent, mourns the "suicide" of the terminally ill "state" of Lebanon. A "Mediterranean appetite for violence," Randal believes, has weakened a Lebanon already sickened by factionalism and corruption.

Randal reserves his greatest scorn for the cynical Israeli hawks;. "The Begin government," he says, "had little interest in a stable Lebanon as long as its principal adversaries, Syria and the Palestinians, were bogged down there." He also emphasizes that Israel's strikes were used to test *American-provided* weapons and compares their strikes to American search-and-destroy tactics in Vietnam. To Randal, America shares responsibility for Lebanon; he goes so far as to describe himself as "sick at heart" and "ashamed of being an American." Such hyperbole mars an otherwise informative book.

—*Pat Martin*

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(continued from "Tilting at Windmills," page 10)

remarkable capacity for growth is that even the critics are compromised. Here, for example, is a quote from the newsletter of Representative Thomas Foglietta of Philadelphia: "The Armed Services Committee assignment will allow the congressman to effectively voice his concern over the ever-growing military budget, while giving direct input on matters concerning installations such as the Philadelphia Navy Yard, one of Pennsylvania's top employers.". . .

I have a nightmare that we'll all end up working in the executive office of a giant hotel for which there will of course be no customers. It has been severely exacerbated by Karen W. Arenson's report in *The New York Times* that the number of corporate managers has grown by almost 50 percent in the last decade and that recently the growth has been most dramatic in the service sector. . . .

One of the worst decisions in the Burger court's parade of losers has upheld the right of the Los Angeles Police Department to continue its quaint custom of using "chokeholds" on suspects. The holds, which appear to be most often used on minorities, exert pressure on neck arteries and have killed 16 people. . . .

I was immensely pleased to read Gene I. Maeroff's recent article in *The New York Times* on the new interest in master teachers. It's an old idea—the title "principal" had its origins in the "principal teacher," who got the job by being an outstanding teacher and continued to play an instructional role—but it's an idea whose time has come again. In fact, it's badly needed because career advancement for outstanding teachers in recent years has meant leaving teaching and going into full-time administration. What we need and what the master teacher role offers is a chance to keep good teachers teaching children and reward them with the opportunity to teach teachers as well. They should also be paid more. Basing pay on actual teaching performance instead of credentials is the most important reform that can be made in public education. And it is a reform that will not be accepted by teachers until they see the evaluation on which their pay is based being made by an outstanding peer, by another teacher they admire and respect—in other words, by a master teacher. . . .

A few weeks ago *The Washington Post* revealed that, during his campaign for reelection, Mayor Marion Barry had been seen in a nightclub that features unclad female dancers and is located in a Washington neighborhood where choirboys definitely do not gather.

The mayor defended himself by saying he was there only to pick up a campaign contribution. But my experience as a participant in and observer of public life has left me with just the faintest suspicion that contributions from such places are sometimes related to protection from raids and other forms of unwarranted police interference with private entrepreneurs who just might occasionally encourage the girls to roll their customers. I wish the mayor had said, "I just wanted to see those naked women.". . .

—*Charles Peters*

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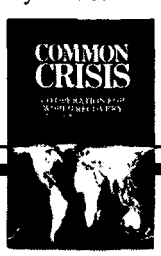

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